BOARD OF TRUSTEES
January 24, 2023
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Regular Meeting Agenda

Individuals wishing to make public comments must attend the meeting in person or may submit comments by sending an email to garciapa@wellingtoncolorado.gov. The email must be received by 4:00 p.m. on the day of the meeting. The comments will be provided to the Trustees and added as an addendum to the packet. Emailed comments will not be read during the meeting.

The Zoom information below is for online viewing and listening only.

Please click the link below to join the webinar:
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Dial(for higher quality, dial a number based on your current location):
US: +1 720 707 2699 or +1 719 359 4580 or +1 669 444 9171 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 360 209 5623
Webinar ID: 848 7116 2393

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Amendments to Agenda
4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment

C. CONSENT AGENDA

1. Minutes from January 10, 2023 Board of Trustee Meeting
2. Resolution No. 03-2023 - A Resolution Approving the Town Administrator's Plan of Administrative Organization

3. Resolution No. 04-2023 - A Resolution Adopting Amendment One to the Colorado Regional Opioid Intergovernmental Agreement for the Larimer County Region

4. Resolution No. 05-2023 - A Resolution of the Board of Trustees of the Town of Wellington Making Appointments to the Wellington Parks, Recreation, Open Space and Trails Advisory Board

D. ACTION

1. Ordinance 01-2023 - An Ordinance Amending the Town of Wellington Marijuana Ordinance
   - Presentation: Dan Sapienza, Town Attorney

E. REPORTS

1. Town Attorney

2. Town Administrator

3. Staff Communications
   a. 2022 Building Activity Summary

4. Board Reports

   a. Solid Waste Policy Council Update
      - Trustee Rebekka Dailey

   b. Finance Committee Letter of Support
      - Trustee Jon Gaiter

F. ADJOURN

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

TOWN OF WELLINGTON

Board of Trustees Meeting

Date: **January 24, 2023**
Subject: **Minutes from January 10, 2023 Board of Trustee Meeting**

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. 01.10.23 Minutes_DRAFT

TOWN OF WELLINGTON

BOARD OF TRUSTEES
January 10, 2023
6:30 PM
Leeper Center, 3800 Wilson Avenue, Wellington, CO

MINUTES

A. CALL TO ORDER
Mayor Chaussee called the meeting to order at 6:29 p.m.

1. Pledge of Allegiance
Mayor Chaussee asked that all rise for the pledge of allegiance.

2. Roll Call
Mayor Calar Chaussee
Mayor Pro Tem Ashley Macdonald
Trustee Jon Gaiter
Trustee Brian Mason
Trustee Rebekka Dailey
Trustee David Wiegand

3. Amendments to Agenda
There were no amendments to the agenda.

4. Conflict of Interest
Mayor Chaussee asked if there were any conflicts of interest on the agenda; there were no conflicts of interest.

B. COMMUNITY PARTICIPATION

1. Public Comment
Mayor Chaussee opened the meeting for public comment to which there was none.

C. CONSENT AGENDA

1. Minutes from December 13, 2022 Board of Trustee Meeting

2. Resolution No. 01-2023 - A Resolution Designating a Public Place for the Posting of Notices Concerning Public Meetings

3. Resolution No. 02-2023 - A Resolution Adopting a 3-Mile Plan for Municipal Annexations
Trustee Gaiter moved to approve the consent agenda; Trustee Wiegand seconded the motion.
Yays – Gaiter, Dailey, Mason, Wiegand, Macdonald, Chaussee
Nays – None

D. ACTION ITEMS

1. 2021 and 2022 Audit Engagement Letter with Mayberry & Company, LLC
Charity Campfield, Finance Director, presented the audit engagement letter noting that two responses were received from the request for proposal (RFP) that had been issued. Mayberry & Company was chosen due to their alignment with the Wellington budget and the expertise of a small firm which will provide more personalized service. Trustee Gaiter reported that the two RFP's were

presented to the Finance Committee which supported retaining Mayberry & Company for the 2021 and 2022 audits.

Mayor Chaussee opened the meeting for public comment to which there was none.

Trustee Gaiter moved to approve the 2021 and 2022 Audit Engagement Letter with Mayberry & Company, LLC; Trustee Mason seconded the motion.

Yays – Gaiter, Dailey, Mason, Wiegand, Macdonald, Chaussee
Nays – None

2. <u>Approving the Lease of Parking Lot</u>

Dan Sapienza, Town Attorney, provided information related to this item and explained the lease is for the parking lot located at 3736 Cleveland Avenue. The lease provided that the Town would be allowed to pave the lot and maintain the lot during the term of the least. It has had multiple extensions since it was approved in 2015 and the most recent extension expired December 31, 2022. The parking lot is public and is also used for offsite parking for town staff. The request is to approve the lease extension for one year with the option to extend for a second year at a higher cost. The town can work to renegotiate the lease for 2024. It was noted that termination of the lease may cause all improvements to be removed, including the asphalt.

Mayor Chaussee opened the meeting for public comment to which there was none.

Trustee Mason moved to approve Lease of the Parking Lot; Trustee Gaiter seconded the motion.

Yays – Gaiter, Dailey, Mason, Wiegand, Macdonald, Chaussee
Nays – None

3. <u>Ordinance 01-2023 - An Ordinance Regulating Marijuana</u>

Dan Sapienza, Town Attorney, presented the ordinance to the Trustees. Based on the ballot language that was approved by the voters, the ordinance could be changed after January 1, 2023. Mr. Sapienza reported that the ordinance presented addresses issues that were discussed at a December work session regarding residential setbacks, variance process through Board of Adjustment (BOA) and requirements for applicants to have the Local Licensing Authority review the needs and desires of the neighborhood during the hearing process.

The Trustees discussed the proposed ordinance and provided comments related to setbacks, the BOA process and the number of variances that could be submitted related to marijuana licensing.

Mayor Chaussee opened the meeting for public comment. Public comment was provided by Austin Hiatt, Colin Mudd, Mario Nicolais, Matt Mullett, Tom Donnelly, and Scoo Leary.

The item was brought back for Trustee discussion which included the following:

- Postpone the vote until the next meeting to have all the Board of Trustees participate.
- Discussion of public setbacks including detention ponds which are zoned public.
- Noting the will of the people who voted and the setbacks that were included in the ballot language.
- Concern with daycares that could be bought out so that a marijuana facility could meet the setback requirements.
- Can staff and the BOA handle the additional variance requests that may come forward.

The Board of Trustees requested the topic be brought to the January 17, 2023 work session for further discussion.

Trustee Gaiter moved to postpone consideration of Ordinance 01-2023 – An Ordinance Regulating Marijuana to the January 24, 2023 Regular Meeting; Trustee Dailey seconded the motion.
Yays – Gaiter, Dailey, Mason, Wiegand, Macdonald, Chaussee
Nays – None

E. LIQUOR LICENSE AUTHORITY

Mayor Chaussee called the meeting of the Liquor License Authority to order at 7:25 pm.

1. **Avuncular Bob's T Bar Inn & Brewpub Operations, LLC Hotel & Restaurant Liquor License Renewal**
   - Presentation: Patti Garcia, Town Administrator/Interim Town Clerk

   Patti Garcia, Town Administrator, reported the renewal for Avuncular Bob's T Bar Inn was in order with a favorable report from Larimer County Sheriff's Office.

   Trustee Mason moved to approve Avuncular Bob's T Bar Inn & Brewpub Operations, LLC Hotel & Restaurant Liquor License Renewal; Trustee Dailey seconded the motion.
   Yays – Gaiter, Dailey, Mason, Wiegand, Macdonald, Chaussee
   Nays – None

   The Board of Trustees moved to the Regular Meeting at 7:27 p.m.

F. REPORTS

1. Town Attorney – Mr. Sapienza reported that a hearing was held for the Smokin' Cowboy retail marijuana license and that Kristin Brown, Marijuana Licensing Authority, would be providing a ruling shortly.

2. Town Administrator - No report.

3. Staff Communications - Kelly Houghteling, Deputy Town Administrator reported that staff would be seeking input at the January 24 meeting on questions related to the community survey that was budgeted for 2023.

4. Board Reports

   Trustee Dailey
   - Next Women of Wellington (WOW) meeting is on January 18; Commissioner Jody Shadduck McNally is the speaker.
   - Was invited to participate in the Poudre School District State of our Youth event.
   - Solid Waste Policy Council meeting on Thursday.
   - Broadband discussion at Commissioner Kefalas meeting which included grant and education opportunities.
   - Request for staff to prepare information on the marijuana sales tax and how it should be used (recreation center, public safety, etc.)

   Trustee Gaiter
   - Reported on last finance committee meeting and noted the letter of support for the work that staff is doing related to finance will be presented at the next Board of Trustee meeting.

   Trustee Wiegand
   - Reported on the last Behavioral Health Council meeting and noted that the facility in south Fort Collins is 65% complete with a goal of moving in August and taking their first client in November. Laurie Stolen offered to present to the Board of Trustees regarding their organization.

G. ADJOURN

On a motion duly made, the meeting was adjourned at 7:40 p.m.

____

Patti Garcia
Town Administrator/Interim Town Clerk

Board of Trustees Meeting

Date: January 24, 2023

Subject: Resolution No. 03-2023 - A Resolution Approving the Town Administrator's Plan of Administrative Organization

BACKGROUND / DISCUSSION

The Wellington Municipal Code provides that the Town Administrator shall propose a plan of administrative organization to the Board of Trustees within 90 days after his or her appointment. The appointment of the Town Administrator is done after the Board of Trustee election in even-numbered years and the plan of administrative organization is generally considered in June of those years. As there has been a modification to the document, it is appropriate to provide the Trustees with the update for consideration. The only major change is the reporting of the Director of Planning which was moved to the Town Administrator.

STAFF RECOMMENDATION

1. Approve Resolution No. 03-2023 - A Resolution Approving the Town Administrator's Plan of Administrative Organization
2. Approve Resolution No. 03-2023 with amendments as the Board of Trustees deems appropriate
3. Postpone consideration of Resolution No. 03-2023 to a specific date and time and provide staff direction regarding additional information or amendments
4. Vote to deny Resolution No. 03-2023

ATTACHMENTS

1. Resolution 03-2023_Plan of Organization
2. 2023 Budget Organizational Chart Final

TOWN OF WELLINGTON

RESOLUTION NO. 03-2023

A RESOLUTION APPROVING THE TOWN ADMINISTRATOR'S PLAN OF ADMINISTRATIVE ORGANIZATION

WHEREAS, Section 2-3-20 of the Wellington Municipal Code provides that the Town Administrator shall proposed a plan of administrative organization to the Board of Trustees within ninety (90) days after his or her appointment, which, if approved by Board Trustees, shall be adopted by resolution. The administrative plan shall provide for such departments and employees as may be deemed necessary for the efficient administration of the Town. All such employees shall be appointed by the Town Administrator with approval of the Board of Trustees.

WHEREAS, the Town Administrator has proposed an administrative plan of organization in the form attached.

NOW, THEREFORE, be it resolved by the Board of Trustees for the Town of Wellington, Colorado, as follows:

1. The Town Board approves the Town Administrator's proposed plan of organization.

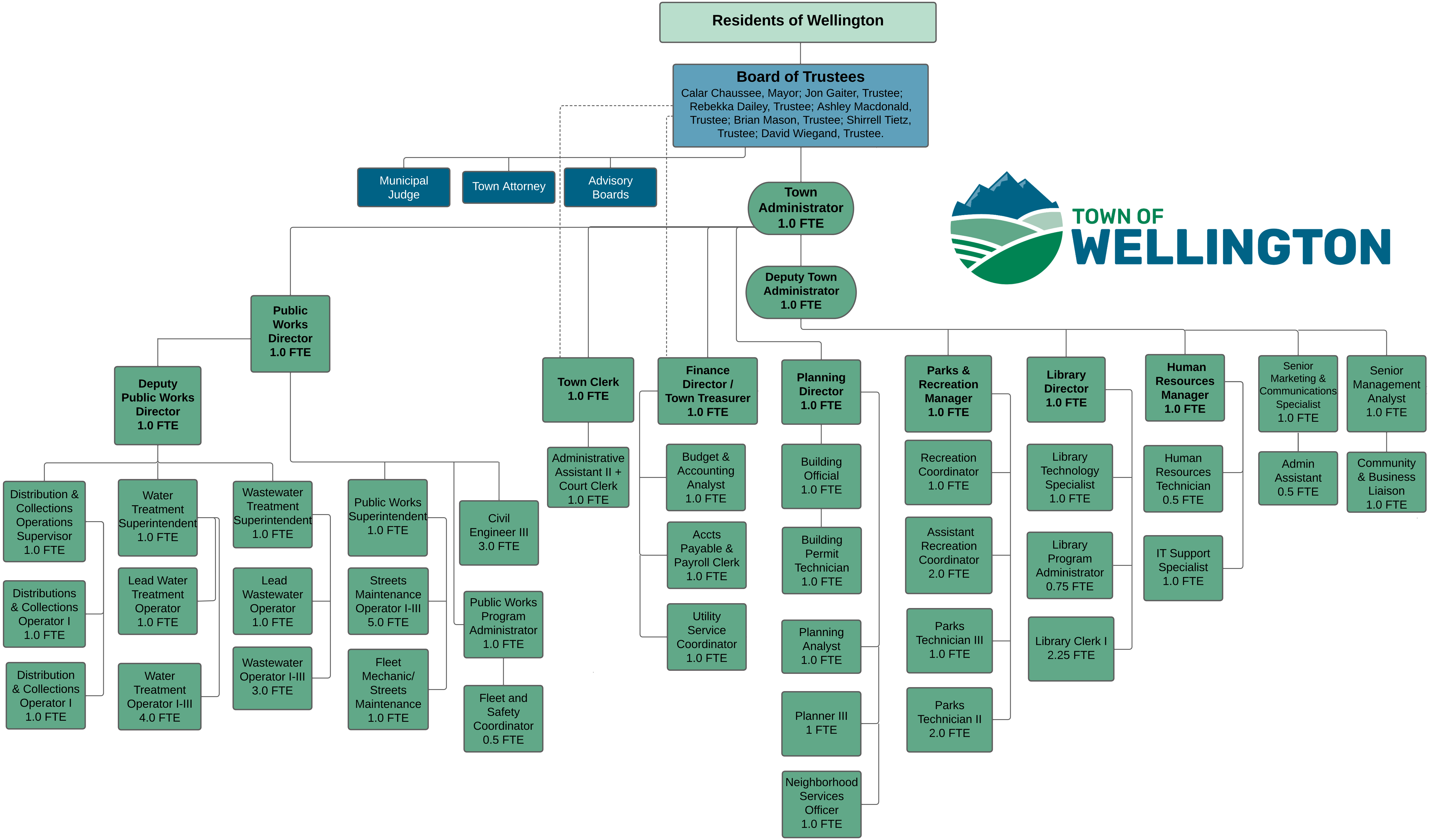
Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 24th day of January, 2023.

TOWN OF WELLINGTON, COLORADO

By:______________________________
Calar Chaussee, Mayor

ATTEST:

____
Patti Garcia, Town Administrator/Interim Town Clerk



Updated: Jaunary 10, 2023

Board of Trustees Meeting

Date: January 24, 2023

Subject: Resolution No. 04-2023 - A Resolution Adopting Admendment One to the Colorado Regional Opioid Intergovernmental Agreement for the Larimer County Region

BACKGROUND / DISCUSSION

In 2022, the Town of Wellington adopted Resolution 22-2022 establishing the Larimer Regional Opioid Abatement Council, an organization that receives and distributes funds from the opioid litigation settlement through the Colorado Attorney General's office.The parties to that IGA are: the Town of Wellington, the City of Loveland, the City of Fort Collins, and Larimer County. Estes Park has expressed a desire to join the council, as it also received funds through the program. The included amendment adds Estes Park as a party to the IGA and includes Estes as a member of the regional council.

STAFF RECOMMENDATION

Motion Options

- Move to approve Resolution No. 04-2023 - A Resolution Adopting Admendment One to the Colorado Regional Opioid Intergovernmental Agreement for the Larimer County Region as proposed.
- Move to approve Resolution No. 04-2023 with amendments as the Board of Trustees deems appropriate.
- Move to postpone consideration of Resolution No. 04-2023 and provide guidance to staff as requested modifications.
- Move to deny Resolution No. 04-2023.

ATTACHMENTS

1. Resolution 04-2023 Amendment One
2. Amendment One to the Regional IGA for Opioid Abatement
3. Resolution 22-2022 - Opioid IGA
4. Larimer Regional IGA
5. 32-2021 Approval of Colorado Opioids Memorandum of Understanding

TOWN OF WELLINGTON

RESOLUTION NO. 04-2023

A RESOLUTION ADOPTING AMENDMENT ONE TO THE COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT FOR THE LARIMER COUNTY REGION

WHEREAS, communities throughout the State of Colorado, including the Town of Wellington ("Town"), are suffering from the epidemic of opioid addiction; and

WHEREAS, the opioid epidemic has not only affected individuals and families across the country, but it has also burdened the local and state governments charged with providing the services needed to address the wave of addiction; and

WHEREAS, local and state governments across the nation, including in Colorado, have filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic; and

WHEREAS, the parties to the various opioid lawsuits have been negotiating settlement agreements to resolve the litigation which include incentive payments for maximizing participation by local governments; and

WHEREAS, through extensive negotiations, local governments and the State of Colorado executed the Colorado Opioids Summary Memorandum of Understanding on August 26, 2021 (the "Colorado MOU"), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado; and

WHEREAS, the Town Board of Trustees, by Resolution 32-2001, authorized participation in the Colorado opioids settlement and authorized execution of the Colorado MOU, settlement participation forms and an escrow agreement to receive funds from the Colorado opioids settlement and maximize recovery from the variety of lawsuits filed by the state and local governments across the nation; and

WHEREAS, the Colorado MOU directly allocates 60% of the Colorado opioids settlement funds to nineteen regions established by the Colorado MOU to be used for approved purposes defined in the Colorado MOU; and

WHEREAS, pursuant to the Colorado MOU, the Town of Wellington, the City of Loveland, the City of Fort Collins, and Larimer County constituted the Larimer Region; and

WHEREAS, Larimer County Board of Health is the entity in the Larimer Region responsible for administering and enforcing state public health laws and regulations and developing, administering, and enforcing local health regulations; and

WHEREAS, the procedures established by the Colorado MOU to receive regional settlement funds required that each region shall create its own regional council to receive and distribute settlement funds; and

WHEREAS, government entities may cooperate and enter into agreements or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units of government pursuant to C.R.S. § 29-1-203; and

WHEREAS, the Town Board of Trustees approved an intergovernmental agreement to establish the Larimer Regional Opioid Council to meet the requirements in the Colorado MOU to ensure the Larimer

Region receives a share of the regional opioid settlement funds, through Resolution 22-2022 on May 24, 2022; and

WHEREAS the parties to the Regional IGA desire to amend the IGA to include Estes Park, Colorado as a Participating Local Government.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

> Amendment One to the Colorado Regional Opioid Intergovernmental Agreement for the Larimer Region is hereby approved and the Mayor is authorized to execute the amendment.

Upon motion duly made, seconded and carried, the foregoing resolution was adopted this 24th day of January, 2023.

TOWN OF WELLINGTON, COLORADO

By:______________________________

Calar Chaussee, Mayor

ATTEST:

____

Patti Garcia, Town Administrator/Interim Town Clerk

AMENDMENT ONE TO THE COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT FOR THE LARIMER COUNTY REGION

I. **<u>Parties.</u>** This Amendment is made and entered into by and between the City of Fort Collins, the City of Loveland, the Town of Wellington, the Town of Estes Park and Larimer County.

II. **<u>Purpose of Amendment.</u>** The original Intergovernmental Agreement ("Regional Agreement") established the Opioid Abatement Council for the Larimer County Region. The original parties identified as the Regional Participating Local Governments ("Regional PLGs") were the City of Fort Collins, the City of Loveland, the Town of Wellington and Larimer County, plus the Larimer County Board of Health. These parties executed the Regional Agreement effective June 7, 2022. Since that time, the Town of Estes Park has requested to be added as a Regional PLG under the Regional Agreement. On September 16, 2022, the Opioid Abatement Council for the Larimer County Region, voted to recommend the addition of the Town of Estes Park as a Regional PLG to the Regional Agreement. This Amendment is intended for the original Regional PLGs and Board of Health, to consent and amend the Regional Agreement to include the Town of Estes Park, and for the Town of Estes Park to agree to the terms and conditions of the Regional Agreement as a Regional PLG.

III. **<u>Term of the Amendment.</u>** This Amendment shall commence on upon the last signature of the Regional PLGs.

IV. **<u>Amendments</u>**.

1. The first paragraph of the Regional Agreement shall state:

THIS COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT (the "Regional Agreement") is made between the City of Fort Collins, the city of Loveland, the Town of Wellington, the Town of Estes Park and Larimer County, all Participating Local Governments, as defined in the Colorado MOU, in the Larimer County Region ("Region"). The parties are individually referred to herein as a "Regional PLG" and collectively as the "Regional PLGs" and the Larimer County Board of Health.

2. Section 3.3(a) of the Regional Agreement shall state:

Chair: The Voting Members for the Region shall appoint one member to serve as Chair of the Regional Council. The Chair's primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Chair must be a Voting Member representing Fort Collins, Loveland, Wellington, Estes Park or Larimer County.

3. Section 6 of the Regional Agreement shall be amended to include:

- Town of Estes Park 0.3502%

4. Section 10.6 of the Regional Agreement shall be amended to include:

10.6. Town of Estes Park designates the Town Administrator or their designee(s).

5. Section 17 of the Regional Agreement shall be amended to include:

For the Town of Estes Park:

Assistant Town Administrator
P.O. Box 1200
Estes Park, CO 80517
jdamweber@estes.org

Town Attorney
P.O. Box 1200
Estes Park, CO 80517
dkramer@estes.org

6. Exhibit X, Section 1, shall be amended to include:

- 1 representative appointed by Estes Park

V. General Provisions.

1. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Regional Agreement, attached and incorporated by this reference, shall remain unchanged and in full force and effect.

2. **Counterparts.** This Amendment may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Amendment.

3. **Adoption of Regional Agreement.** The Town of Estes Park, through execution and adoption of this Amendment, executes, adopts and agrees to be bound and obligated by all the terms and conditions of the original Regional Agreement, attached and incorporated by this reference, as amended.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

City of Loveland, Colorado

Signature: ________________________________

Name: Stephen C. Adams

Title: City Manager

ATTEST:

__________________________ ________________________
City Clerk Date

APPROVED AS TO FORM:

____
Assistant City Attorney

City of Fort Collins, Colorado

Signature: ________________________________

Name: ________________________________

Title: ________________________________

ATTEST:

__________________________ ________________________
City Clerk Date

APPROVED AS TO FORM:

____
City Attorney

Town of Wellington, Colorado

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________

Town Clerk Date

APPROVED AS TO FORM:

____

Attorney

County of Larimer, Colorado

By:____
Chair, Board of County Commissioners of Larimer County

Date: _____________

Attest:______________________________
Clerk to the Board

APPROVED AS TO FORM:

____
Deputy County Attorney

Larimer County Board of Health

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________
County Clerk Date

APPROVED AS TO FORM:

____
Deputy County Attorney

Town of Estes Park, Colorado

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________
Town Clerk Date

APPROVED AS TO FORM:

____
Town Attorney

TOWN OF WELLINGTON

RESOLUTION NO. 22-2022

A RESOLUTION APPROVING THE COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT FOR THE LARIMER COUNTY REGION AND APPOINTING A REPRESENTATIVE FROM THE TOWN OF WELLINGTON TO SERVE ON THE LARIMER REGIONAL OPIOID COUNCIL

WHEREAS, communities throughout the State of Colorado, including the Town of Wellington ("Town"), are suffering from the epidemic of opioid addiction; and

WHEREAS, the opioid epidemic has not only affected individuals and families across the country, but it has also burdened the local and state governments charged with providing the services needed to address the wave of addiction; and

WHEREAS, local and state governments across the nation, including in Colorado, have filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic; and

WHEREAS, the parties to the various opioid lawsuits have been negotiating settlement agreements to resolve the litigation which include incentive payments for maximizing participation by local governments; and

WHEREAS, through extensive negotiations, local governments and the State of Colorado executed the Colorado Opioids Summary Memorandum of Understanding on August 26, 2021 (the "Colorado MOU"), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado; and

WHEREAS, the Town Board of Trustees, by Resolution 32-2001, authorized participation in the Colorado opioids settlement and authorized execution of the Colorado MOU, settlement participation forms and an escrow agreement to receive funds from the Colorado opioids settlement and maximize recovery from the variety of lawsuits filed by the state and local governments across the nation; and

WHEREAS, the Colorado MOU directly allocates 60% of the Colorado opioids settlement funds to nineteen regions established by the Colorado MOU to be used for approved purposes defined in the Colorado MOU; and

WHEREAS, pursuant to the Colorado MOU, the Town of Wellington, the City of Loveland, the City of Fort Collins, and Larimer County constitute the Larimer Region; and

WHEREAS, Larimer County Board of Health is the entity in the Larimer Region responsible for administering and enforcing state public health laws and regulations and developing, administering, and enforcing local health regulations; and

WHEREAS, the procedures established by the Colorado MOU to receive regional settlement funds include a requirement that each region shall create its own regional council to receive and distribute settlement funds; and

WHEREAS, government entities may cooperate and enter into agreements or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units of government pursuant to C.R.S. § 29-1-203; and

WHEREAS, the Town Board of Trustees desires to approve an intergovernmental agreement to establish the Larimer Regional Opioid Council to meet the requirements in the Colorado MOU to ensure the Larimer Region receives a share of the regional opioid settlement funds; and

WHEREAS, the Town Board of Trustees desires to appoint an authorized representative to act on behalf of the Town as a voting member of the Larimer Regional Opioid Council and an alternate to act in their absence.

NOW, THEREFORE, be it resolved by the Board of Trustees for the Town of Wellington, Colorado, as follows:

1. The "Colorado Regional Opioid Intergovernmental Agreement For the Larimer County Region" ("IGA") is hereby approved.
2. The Mayor is authorized to execute the IGA in consultation with the Town Attorney, and subject to any modifications in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the Town.
3. That Trustee Brian Mason shall be appointed to serve as representative for the Town of Wellington on the Regional Council and _______________ shall be the alternate representative.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 24th day of May, 2022.

TOWN OF WELLINGTON, COLORADO

By: ______________________

Calar Chaussee, Mayor

ATTEST:

____

Krystal Eucker, Town Clerk

COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT

FOR THE LARIMER COUNTY REGION

THIS COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT (the "Regional Agreement") is made between the City of Fort Collins, the City of Loveland, the Town of Wellington and Larimer County, all Participating Local Governments, as defined in the Colorado MOU, in the Larimer County Region ("Region"). The parties are individually referred to herein as a "Regional PLG" and collectively as the "Regional PLGs" and the Larimer County Board of Health.

RECITALS

WHEREAS, the State of Colorado and Participating Local Governments executed the Colorado Opioids Summary Memorandum of Understanding on August 26, 2021 (the "Colorado MOU"), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

WHEREAS, the Regional Agreement assumes and incorporates the definitions and provisions contained in the Colorado MOU, and the Regional Agreement shall be construed in conformity with the Colorado MOU (any conflict in definitions between this Regional Agreement and the Colorado MOU shall be resolved in favor of the Colorado MOU);

WHEREAS, all Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

WHEREAS, there shall be a 20% direct allocation of the total Opioid Funds received by the State to Participating Local Governments as a Local Government Share;

WHEREAS, allocations to Participating Local Governments from the LG Share shall first be determined using the percentages shown in **Exhibit D** of the Colorado MOU;

WHEREAS, The LG Share for each County Area shall then be allocated among the county and the other Participating Local Governments within it. **Exhibit E** reflects the default allocation that will apply unless the Participating Local Governments within a County Area enter into a written agreement providing for a different allocation;

WHEREAS, the Regional PLGs desire to modify the default allocation of the LG Share in the Colorado MOU;

WHEREAS, Participating Local Governments shall organize themselves into Regions, as further depicted in **Exhibit C** to the Colorado MOU;

WHEREAS, Regions may consist of Single-County Regions, Multi-County Regions, or Single County-Single City Regions (Denver and Broomfield).

WHEREAS, there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;

WHEREAS, each Region shall be eligible to receive a Regional Share according to **Exhibit F** to the Colorado MOU;

WHEREAS, the Colorado MOU establishes the procedures by which each Region shall be entitled to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

WHEREAS, the procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;

WHEREAS, all aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU;

WHEREAS, each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;

WHEREAS, each such Regional Council shall submit a two-year plan to the Abatement Council that identifies the Approved Purposes for which the requested funds will be used, and the Regional Council's fiscal agent shall provide data and a certification to the Abatement Council regarding compliance with its two-year plan on an annual basis;

WHEREAS, the Regional Agreement pertains to the procedures for the Regional PLGs to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Regional PLGs incorporate the recitals set forth above and agree as follows:

1. **DEFINITIONS**. The defined terms used in this Regional Agreement shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the Regional Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Regional Agreement.

2. <u>OBLIGATIONS OF THE REGIONAL PLGS</u>. The Regional PLGs and Board of Health shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

3. <u>REGIONAL COUNCIL</u>.

3.1. Purpose: In accordance with the Colorado MOU, a Regional Council, consisting of representatives appointed by the Regional PLGs and Board of Health, shall be created to oversee the procedures by which a Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region's Share of Opioid Funds are administered.

3.2. Membership: The Regional Council shall consist of Voting Members and Nonvoting Members as set forth in the Regional Governance Structure, attached hereto as **Exhibit X** and incorporated to this IGA. Appointment and participation of Nonvoting Members shall be determined by the Voting Members as further set forth in the Regional Council's Bylaws.

3.3. Provisions of Regional Council:

a. **Chair:** The Voting Members for the Region shall appoint one member to serve as Chair of the Regional Council. The Chair's primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Chair must be a Voting Member representing Fort Collins, Loveland, Wellington or Larimer County.

b. **Non-Participation:** A Local Government that chooses not to become a Participating Local Government in the Colorado MOU shall not receive any Opioid Funds from the Regional Share or participate in the Regional Council.

c. **Terms:** The Regional Council shall have its initial organizational meeting prior to July 1, 2022. In order to do so, if not already selected by the Regional PLG's and Board of Health, within sixty (60) days of the first Settlement being entered, Voting Members shall be appointed consistent with **Exhibit X**, and shall serve two-year terms. Following the expiration of that two-year term, the Regional PLGs and Board of Health may reappoint that Voting Member, or appoint a new Voting Member consistent with Exhibit X. All terms shall be two-year terms unless earlier terminated in accordance with the Agreement.

(i) If a Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of their term, a replacement Voting Member shall be appointed within sixty (60) days in accordance with Section 3.2. The newly appointed Voting Member's full term shall begin upon appointment. Any Voting Member who is an elected official shall have their term automatically expire upon leaving office.

(ii) The purpose of the two-year term is to allow representatives of the Regional PLGs and Board of Health an increased opportunity to serve on the Regional Council. However, Voting Members who have already served on the Regional Council may be appointed more than once and may serve consecutive terms if appointed to do so by their respective Regional PLG governing body or Board of Health.

3.4. Duties: The Regional Council is responsible for engaging with the Abatement Council on behalf of its Region and following the procedures outlined in the Colorado MOU for requesting

Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the Regional Council may also be subject to an accounting from the Abatement Council. The Regional Council shall also solicit, review, and approve funding of projects with regional abatement funds and local government abatement funds that are shared with the Region, if any, in accordance with the terms of the Colorado MOU and any parameters adopted by the Regional Council, which shall not conflict with the Colorado MOU. At its first meeting, the Regional Council shall certify to the Abatement Council that the Regional Council has been formed and that a Fiscal Agent has been designated; such certification shall include the names and affiliations of the Regional Council's members and the name of the designated Fiscal Agent.

3.5. **Governance:** The Regional Council may establish its own procedures through adoption of bylaws if needed. Any governing documents must be consistent with this IGA and the Colorado MOU. The initial Bylaws attached hereto as Exhibit Y, are adopted as the initial Bylaws for the function of the Regional Council until such time as the Regional Council shall modify and adopt Bylaws as they deem appropriate. The Regional Council is empowered to adopt subsequent Bylaws to address any necessary matters not inconsistent with this Regional Agreement and Colorado MOU. The Voting Member appointed from the same entity as the Fiscal Agent shall be the interim chair of the Regional Council until appointment/elections are held pursuant to the initial Bylaws.

3.6. **Authority:** The terms of the Colorado MOU control the authority of the Regional Council and the Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should the Regional Council require legal assistance in determining its authority, it may seek guidance from the legal counsel of the county or municipal government of the Regional Council's fiscal agent at the time the issue arises.

3.7. **Collaboration:** The Regional Council shall facilitate collaboration between the State, Participating Local Governments within its Region, the Board of Health, the Abatement Council, and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

3.8. **Transparency:** The Regional Council shall operate with all reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the Regional Council, the Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

3.9. **Conflicts of Interest:** Voting Members shall abide by the conflict-of-interest rules applicable to local government officials under state law. Nonvoting Members shall disclose any existing or potential conflicts of interest in connection with their participation and shall comply with any conflict-of-interest requirements of the Regional Council's Bylaws.

3.10. **Ethics Laws:** Voting Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws. Nonvoting Members shall comply with any ethics requirements of the Regional Council's Bylaws.

3.11. **Decision Making:** The Regional Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the Regional Council shall make decisions by a majority vote of its Voting Members.

4. <u>REGIONAL FISCAL AGENT</u>

4.1. Purpose: According to the Colorado MOU, the Regional Council must designate a fiscal agent for the Region prior to the Region receiving any Opioid funds from the Regional Share. All funds from the Regional Share shall be distributed to the Regional Council's fiscal agent for the benefit of the entire Region.

4.2. Designation: The initial fiscal agent shall be Larimer County. However, the Regional Council may nominate and designate a future fiscal agent for the Region by majority vote. Regional fiscal agents must be a Regional PLG.

4.3. Term: A Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado. A Regional fiscal agent may terminate their appointment by giving the Regional Council one hundred twenty (120) days notice.

4.4. Duties: The Regional fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the Abatement Council and Voting Member entities on an annual basis. In addition, the Regional fiscal agent shall perform certain recordkeeping duties outlined below.

a. **Opioid Funds:** The Regional fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon direction by the Regional Council, the Regional fiscal agent shall make any such Opioid Funds available to the Regional Council or to approved entities performing abatement activities approved by the Regional Council. Any approved abatement activities shall have a contract or other written document outlining the requirements and approved funding, and shall be entered into on behalf of the Regional Council by a Regional PLG designated by the Regional Council.

b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the Regional Council's expenditure data from their allocation of the Regional Share and certify to the Abatement Council that the Regional Council's expenditures were for Approved Purposes and complied with its 2-year plan.

c. **Recordkeeping:** The Regional fiscal agent shall maintain necessary records with regard the Regional Council's meetings, decisions, plans, and expenditure data.

4.5. **Authority:** The Regional Council shall have authority to decide how funds allocated to the region shall be distributed in accordance with the Colorado MOU and adopted two-year plan and shall authorize a Regional PLG to execute agreements accordingly. The terms of the Colorado MOU control the authority of a Regional Council, and by extension, the Regional fiscal agent.

4.6. **Administration Costs:** In accordance with the Colorado MOU, the Regional fiscal agent may distribute to the Regional PLGs reasonable administrative costs associated with overseeing and administering of Opioid Funds that shall not exceed actual costs or 10% of the Region's regional abatement funds and local government abatement funds that are shared with the Region, if any. The Regional Council shall determine the funds allocated to the administrative costs of the Regional fiscal agent and Regional PLGs upon adoption of the budget as required by the Regional Bylaws. Regional PLGs must submit to the Regional fiscal agent a proposed budget for administrative costs associated with execution and management of agreements as authorized by the Regional Council. The Regional PLGs must submit to the Regional fiscal agent all supporting invoices, bills, time sheets, and other documents necessary to justify their administrative costs no less than ninety (90) days prior to the date which the budget must be completed by the Regional fiscal agent as required by the Regional Bylaws.

5. REGIONAL TWO-YEAR PLAN

5.1. Purpose: According to the Colorado MOU, as part of a Regional Council's request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

5.2 Development of 2-Year Plan: In developing a 2-year plan, the Regional Council shall solicit recommendations and information from all Regional PLGs, Board of Health and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, a Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

5.3 Amendment: At any point, a Regional Council's 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

6. LG SHARE ALLOCATION. Pursuant to the Colorado MOU, the Regional PLGs agree to the following modified allocations of the LG Share stated in Exhibit E:

- Larimer County 56.0589%
- City of Fort Collins 21.00975%
- City of Loveland 21.00975%
- Town of Wellington 0.3653%

7. DISPUTES WITHIN REGION. In the event that any Regional PLG disagrees with a decision of the Regional Council, or there is a dispute regarding the appointment of Voting or

Nonvoting Members to the Regional Council, that Regional PLG shall inform the Chair of its dispute at the earliest possible opportunity. In response, the Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Regional PLG informing the Chair of its dispute, the Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the Regional Council may hold a vote of Voting Members, with the Chair serving as the tie-breaker if necessary, or the Regional Council may devise its own dispute resolution process. However, in any disputes regarding the appointment of a Voting Member, that Voting Member will be recused from voting on the dispute. The decision of the Regional Council is a final decision.

8. DISPUTES WITH ABATEMENT COUNCIL. If the Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council's right to seek recoupment of any deficiency in its Regional Share.

9. RECORDKEEPING. The current Regional fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement on behalf of the Regional Council. All records maintained by the individual PLG's shall be maintained pursuant to Section 18.12. Any former Regional fiscal agent shall forward copies of records to the current Regional fiscal agent. Former Regional fiscal agents may retain copies of records it deems necessary to comply with any accounting or fiscal obligations.

10. **<u>AUTHORIZED REPRESENTATIVES</u>**. Each Regional PLGs' and the Board of Health's initial representative designated below shall be the point of contact to coordinate the obligations as provided herein. The Regional PLGs and the Board of Health designate their authorized representatives under this Regional Agreement as follows:

10.1. Larimer County designates the County Manager or their designee(s).

10.2. City of Fort Collins designates the City Manager or their designee(s).

10.3. City of Loveland designates the Acting Library Director or their designee(s).

10.4. Town of Wellington designates the Town Administrator or their designee(s).

10.5. Board of Health designates the Larimer County Public Health Director or their designee(s).

11. **<u>OBLIGATIONS OF THE REGIONAL PLGS</u>**. The Regional PLGs and Board of Health shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

12. **<u>TERM</u>**. The Regional Agreement will commence upon the date of the last signature of the PLG's and Board of Health, and shall expire on the date the last action is taken by the Region, consistent with the terms of the Colorado MOU and any Settlement. (the "Term"). The Regional Council may specify a specific end date to clarify when the "last action" has been taken by the Region.

13. <u>Informational Obligations</u>. Each Regional PLG hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Regional Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Regional Agreement or any remedies available to the Regional PLGs hereunder.

14. <u>CONFIDENTIALITY</u>. The Regional PLGs and Board of Health, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Regional PLG or Board of Health, or otherwise have access to, except as may be required by law. Nothing in this Regional Agreement shall in any way limit the ability of the Regional PLGs or Board of Health to comply with any laws or legal process concerning disclosures by public entities. The Regional PLGs and Board of Health understand that all materials exchanged under this Regional Agreement, including confidential information or proprietary information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq*., C.R.S., (the "Act"). In the event of a request to a Regional PLG or Board of Health for disclosure of confidential materials, the Regional PLG or Board of Health shall advise the Regional PLGs or Board of Health of such request in order to give the Regional PLGs or Board of Health the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Regional PLG or Board of Health objects to disclosure of any of its material, the Regional PLG or Board of Health shall identify the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Regional PLG or Board of Health agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the Regional PLGs or Board of Health may tender all material to the court for judicial determination of the issue of disclosure.

15. GOVERNING LAW AND VENUE. This Regional Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating solely to this Regional Agreement will be in the District Court of the State of Colorado for Larimer County. Venue for any legal action relating to the Colorado MOU shall be in a court of competent jurisdiction where a Settlement or consent decree was entered, as those terms are described or defined in the Colorado MOU. If a legal action relates to both a Regional Agreement and the Colorado MOU, venue shall also be in a court of competent jurisdiction where a Settlement or consent decree was entered.

16. TERMINATION. The Regional PLGs and Board of Health enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Regional PLG or Board of Health, in its discretion, may terminate their participation in the Regional Agreement, in whole or in part, upon written notice to the other Regional PLGs and Board of Health. Each Regional PLG and Board of Health also has the right to terminate the Regional Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the other Regional PLGs and Board of Health. A Regional PLG's or Board of Health's decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Regional PLGs or Board of Health present or future administration of its Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Regional PLG's or Board of Health's decision to terminate themselves from this Regional Agreement shall have the same effect as non-participation, as outlined in Section 3.2.1(b).

17. NOTICES. “Key Notices” under this Regional Agreement are notices regarding default, disputes, or termination of the Regional Agreement. Key Notices shall be given in writing and shall be deemed received if given by confirmed electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Regional PLGs and Board of Health will follow up any electronic transmission with a hard copy of the communication by the means described above. All other communications or notices between the Regional PLGs and Board of Health that are not Key Notices may be done via electronic transmission. The Regional PLGs and Board of Health agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall include a reference to the Regional Agreement, and Key Notices shall be given to the Regional PLGs and Board of Health through the representatives outlined in Section 9.

1. For Larimer County

County Manager
200 W. Oak St.
Fort Collins, CO 80522

City Attorney

224 Canyon Ave.
Fort Collins, CO 80521

2. For the City of Loveland

Amy Phillips
Acting Library Director
Loveland Public Library
300 N. Adams
Loveland, CO 80537
amy.phillips@cityofloveland.org

City Attorney
500 E. Third Street, Suite 330
Loveland, CO 80537
CityAttorney@cityofloveland.org

3. For the City of Fort Collins:

City Manager
300 Laporte Avenue
P.O. Box 580
Fort Collins, CO 80522
[email address pending]

City Attorney
300 Laporte Avenue
P.O. Box 580
Fort Collins, CO 80522
caseniorstaff@fcgov.com

4. For the Town of Wellington:

Patti Garcia
Town Administrator
P.O.Box127
Wellington, CO 80549
garciap@wellingtoncolorado.gov

With copy to:
Dan Sapienza
March & Olive, LLC
1312 S. College Ave.
Fort Collins, CO 80524

dan@bmarchlaw.com

5. For the Board of Health:

Public Health Director
1525 Blue Spruce Dr.
Fort Collins, CO 80524

County Attorney
224 Canyon Ave.
Fort Collins, CO 80521

18. GENERAL TERMS AND CONDITIONS

18.1. **Independent Entities**. The Regional PLGs and Board of Health enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.

18.2. **Assignment**. This Regional Agreement shall not be assigned by any Regional PLG or Board of Health without the prior written consent of all Regional PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Regional Agreement.

18.3. **Integration and Amendment**. This Regional Agreement represents the entire agreement between the Regional PLGs and Board of Health and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by the Regional PLGs. If any provision of this Regional Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Regional Agreement shall continue in full force and effect.

18.4. **No Construction Against Drafting Party**. The Regional PLGs, Board of Health, and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Regional PLG merely because any provisions of the Regional Agreement were prepared by a particular Regional PLG.

18.5. **Captions and References**. The captions and headings in this Regional Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Regional Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

18.6. **Statutes, Regulations, and Other Authority**. Any reference in this Regional Agreement to a statute, regulation, policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Regional Agreement.

18.7. **Conflict of Interest**. No Regional PLG shall knowingly perform any act that would conflict in any manner with said Regional PLG's or Board of Health's obligations hereunder. Each Regional PLG and Board of Health certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. No elected or employed member of any Regional PLG or Board of Health shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.

18.8. **Inurement**. The rights and obligations of the Regional PLGs and Board of Health to the Regional Agreement inure to the benefit of and shall be binding upon the Regional PLGs, Board of Health, and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.

18.9. **Survival**. Notwithstanding anything to the contrary, the Regional PLGs and Board of Health understand and agree that all terms and conditions of this Regional Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Regional Agreement shall survive such termination or expiration and shall be enforceable against a Regional PLG and Board of Health if such Regional PLG or Board of Health fails to perform or comply with such term or condition.

18.10. **Waiver of Rights and Remedies**. This Regional Agreement or any of its provisions may not be waived except in writing by a Regional PLG's authorized representative. The failure of a Regional PLG or Board of Health to enforce any right arising under this Regional Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

18.11. **No Third-Party Beneficiaries**. Enforcement of the terms of the Regional Agreement and all rights of action relating to enforcement are strictly reserved to the Regional PLGs. Nothing contained in the Regional Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Regional PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.

18.12. **Records Retention**. The Regional PLGs shall maintain all records, including working papers, notes, and financial records in accordance with their applicable record retention schedules and policies. Copies of such records shall be furnished to the Parties request.

18.13. <u>Execution by Counterparts; Electronic Signatures and Records</u>. This Regional Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Regional PLGs and Board of Health approve the use of electronic signatures for execution of this Regional Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq*. The Regional PLGs and Board of Health agree not to deny the legal effect or enforceability of the Regional Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Regional PLGs and Board of Health agree not to object to the admissibility of the Regional Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

18.14. <u>Authority to Execute</u>. Each Regional PLG and Board of Health represents that all procedures necessary to authorize such Regional PLG's and Board of Health's execution of this Regional Agreement have been performed and that the person signing for such Regional PLG and Board of Health has been authorized to execute the Regional Agreement.

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City of Loveland, Colorado

Signature: ________________________________

Name: Stephen C. Adams

Title: City Manager

ATTEST:

__________________________ ________________________

City Clerk Date

APPROVED AS TO FORM:

____

Assistant City Attorney

City of Fort Collins, Colorado

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________
City Clerk Date

APPROVED AS TO FORM:

____
City Attorney

Town of Wellington, Colorado

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________
Town Clerk Date

APPROVED AS TO FORM:

____
Attorney

County of Larimer, Colorado

Signature: ________________________________

Name: ________________________________

Title: ________________________________

ATTEST:

County Clerk Date

APPROVED AS TO FORM:

County Attorney

Larimer County Board of Health

Signature: ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

________________________ ______________________

County Clerk Date

APPROVED AS TO FORM:

____

County Attorney

Exhibit X

LARIMER REGIONAL GOVERNANCE STRUCTURE

Membership Structure

1. Voting Members
   - 1 representatives appointed by Larimer County
     - Initial Voting Member-_______________________________
   - 1 representatives appointed by Fort Collins
     - Initial Voting Member-_______________________________
   - 1 representatives appointed by Loveland
     - Initial Voting Member-_______________________________
   - 1 representatives appointed by Wellington
     - Initial Voting Member-_______________________________
   - 1 representative appointed by Board of Health
     - Initial Voting Member-_______________________________

2. Advisory Members (Optional) (Authorized to Participate in Deliberation)
   - 1 representative from the county human services department
   - 1 representative from county behavioral health services
   - 1 Community Representative - Lived Experience
   - Fiscal Agent - financial representative
   - 1 representative appointed by CJAC
   - 1 representative appointed by Chief Judge of 8th Judicial District

3. Subject Matter Experts (Optional) (Authorized to Present, but do not Deliberate)
   - Health District of Northern Larimer County
   - Thompson Valley Emergency Health District
   - Municipal Judicial Representative(s)
   - representatives from behavioral health providers
   - representatives from health care providers
   - recovery/treatment experts (at least one opioid addiction specialist)
   - other county or city representatives (including other local governments)
   - representative from District Attorney’s Office
   - representative from Public Defender’s Office
   - representatives from local school districts

Exhibit Y

OFFICIAL BYLAWS OF

“LARIMER REGIONAL OPIOID COUNCIL”

ARTICLE I - NAME AND STATUS

The name of this organization shall be the “Larimer Regional Opioid Council”, also referred to as “LROC” or the “Council”, which is comprised of the City of Fort Collins, the City of Loveland, the Town of Wellington, and Larimer County (These parties are individually referred to herein as a “Regional PLG” and collectively as the “Regional PLGs.”), and the Larimer County Board of Health.

ARTICLE II – PURPOSE

The State of Colorado and Participating Local Governments executed the Colorado Opioids Summary Memorandum of Understanding on August 26, 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado. The Colorado MOU organized Participating Local Governments into Regions eligible to receive a Regional Share, a portion of the 60% direct allocation of Opioid Funds allocated to regions. The Regional PLGs formed the Council through the Colorado Regional Opioid Intergovernmental Agreement for the Larimer County Region (“IGA”). Each Region must create its own Regional Council while giving consideration to the regional governance models illustrated in the Colorado MOU. The Regional Council must be formed by the Participating Local Governments within the Region and designate a fiscal agent for the Region. Regional fiscal agents shall be county or municipal governments only. All funds from the Regional Share shall be distributed to the Regional Council's identified fiscal agent for the benefit of the entire Region.

The organization is constituted for the purpose of formulating and submitting a 2-year plan, implementing the plan as well as reporting and auditing at the end of each annual cycle for the LROC funds for the Larimer County area.

The organization is not formed for any pecuniary or financial gain and no part of the assets, income, or profit of the organization shall be distributed to or inure to the benefit of the directors, officers, committee members, or staff of the organization.

ARTICLE III - MEMBERSHIP

1. *Voting Members* of the Regional Council shall consist of one representative from each of the four Regional PLGs plus one representative from Larimer County Health with only one vote counted from each. The representative shall consist of a representative appointed by each municipality, Larimer County, and Larimer County Board of Health. Each entity will designate an alternate to serve in the absence of the appointed representative. The alternate may only vote in the absence of the appointed representative.

2. *Advisory Members* of the Council shall include those entities identified in the Larimer County Regional Governance Structure, Exhibit X of the IGA, ("Governance Structure") and may be allowed to participate in deliberations of the Council, as determined by the Voting Members of the Council. Advisory members are not allowed to vote. The Council may vote to include additional Advisory Members. Advisory Members shall not be counted for purposes of quorum.
3. *Subject Matter Experts* of the Council may include those entities and individuals identified in the "Governance Structure." Subject Matter Experts are not entitled to participate in deliberations of the Council unless invited to participate by the Council and are not entitled to vote. The Council may vote to include additional Subject Matter Experts. Subject Matter Experts shall not be counted for purposes of quorum.

ARTICLE IV – OFFICERS AND THEIR ELECTION

The officers of the organization will consist of the *Chair*, *Vice-Chair*, and *Secretary*. The Council as a whole will elect these officers.

1. The Chair will be elected by a majority vote of the Council as a whole.
2. The Vice-Chair will be elected by a majority vote of the Council and will assume the position of Chair upon the death, disability, removal from office or inability of the Chair to serve. If the assumption of the position of Chair is to be permanent, the Council as a whole shall elect a new Vice-Chair at their next regular meeting.
3. In the event that a vacancy occurs in both the positions of Chair and Vice-Chair, the Secretary/ shall temporarily assume the office of Chair, and elections shall be held at the next regular meeting of the Council to replace the two vacant positions.

Elections for officers shall be held at the first regular meeting of the Council each calendar year. Only those persons who have signified their consent to serve if elected may be nominated or elected to hold office.

An officer or member of the Council may be removed from office or from the Council for cause. Cause is defined as follows:

- Failure to disclose or properly manage a conflict of interest.
- Misuse of confidential information.
- Missing three consecutive Council meetings.
- Obstructive behavior or other behavior that interferes with the organization's purpose.
- Upon removal from the Council by the appropriate appointing organization.

Upon removal from the Council, the appropriate appointing organization shall appoint a new representative.

ARTICLE V – DUTIES OF OFFICERS

1. CHAIR: The Chair shall preside at all meetings of the Council. They shall perform other duties as may be prescribed in these Bylaws as assigned to them by the Council or committee and shall

coordinate the work of the Council, committee, and any special or standing committees, contractors, and staff as may be developed.

2. VICE-CHAIR: The Vice-Chair shall perform all duties of the Chair in the absence or incapacity of the Chair, and other specialized duties as assigned by the Council or the Committee.
3. SECRETARY: The Secretary shall assure that minutes are kept of the meetings of the organization, see that timely notice of meetings is given, and be custodian of organization records.

ARTICLE VI – MEETINGS

The Council will meet monthly on the ________________of the month, subject to change. The Council will meet every __________ for the purpose of an Annual Meeting to certify committee membership for the following year, review organization progress, and set major policy matters.

A quorum will be required to transact business. A quorum will be defined as a majority of filled Voting Member positions. The Council at the annual meeting may set other regular meetings of the Council for that calendar year. A meeting of the Council may be called at any time by the Chair, or by a majority of Council voting members with three days written notice to all Voting Members.

In addition to in-person meetings, the Council and any committees or subsidiary bodies of the Council may conduct a regular or special meeting by electronic means only in accordance with these Bylaws. The following are minimum requirements that must be met in connection with electronic participation and conduct of meetings by electronic means:

1. For the Council, the Chairperson of the Council, or Vice Chairperson in the absence of the Chairperson, or the chair of any committee or other formal subgroup of the Council, may determine that any meeting will be conducted by electronic means, due to convenience, ease of access, public health or safety concerns, or other reasonable considerations, so long as a minimum of twenty-four hours advance notice is provided to all Voting Members of the body to meet and is provided to the general public, along with instructions for how to participate in or observe the meeting. Individual Voting Members of the body may request to participate in any meeting remotely by providing notice sufficient to allow arrangements to be made and to allow twenty-four hours advance notice to be provided to other Voting Members.

2. The technology in use to conduct a meeting using electronic means must allow all members of the Council, committee or other subgroup to hear each other and to hear any presentation or comment offered, and should allow viewing of any visual materials presented. The general ability to view all members of the body and any speakers on video is also preferred and will be a consideration in determining whether the overall technology for the meeting is adequate.

3. Applicable procedural requirements for the conduct of a meeting, such as requirements for a quorum or the taking of minutes, are not affected by the use of electronic means to meet.

4. All votes shall be conducted by a call of the roll.

5. If at any time the Chairperson or a majority of the Voting Members meeting determine that the electronic technology in use is interfering with the effective conduct of the meeting, the meeting shall be ended and continued either in person or after addressing the technology issues.

All meetings of the Council shall be in accordance with Colorado Open Meetings Law and all other applicable laws. The Chair may call an executive session as allowed by law.

ARTICLE VII – BUDGET AND FISCAL CONTROLS

The Council will approve a line-item budget prepared by the fiscal agent annually. Adoption of the Budget will be at the final scheduled meeting of the year.

Fiscal controls will be established by the Council, and will be voted on by the Voting Members. The Chair and Vice-Chair will sign the requisition to be presented to the fiscal agent for payment.

All funding and/or grant expenditures approved by the Council shall be executed through a contract or grant award agreement with the identified service or project provider. One of the PLG's will be assigned for every approved expenditure and such PLG shall be responsible for preparing, reviewing and executing all necessary contractual documents.

ARTICLE VIII – FISCAL YEAR

The fiscal year of the Council shall be the calendar year.

ARTICLE IX – AMENDMENT OF BYLAWS

These Bylaws may be amended or repealed by a majority vote of the Voting Members of the Council (not a majority of those present) at any meeting of the Council provided, however, that written notice of the proposed amendment or repeal, verbatim, shall be provided to each Voting Member not less than ten days prior to such meeting.

TOWN OF WELLINGTON

RESOLUTION NO. 32-2021

A RESOLUTION REGARDING APPROVAL OF COLORADO OPIOIDS MEMORANDUM OF UNDERSTANDING

WHEREAS, communities throughout the state of Colorado are suffering from the epidemic of opioid addiction;

WHEREAS, the opioid epidemic has not only affected individuals and families across the state, but it has also burdened the local and state governments charged with providing the services needed to address the wave of addiction;

WHEREAS, local and state governments across the nation, including in Colorado, have filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic;

WHEREAS, the parties to the various opioid lawsuits have been negotiating settlement agreements to resolve the litigation which include incentive payments for maximizing participation by local governments;

WHEREAS, through extensive negotiations, local governments and the Colorado Attorney General's Office have drafted a Memorandum of Understanding to govern how opioids settlement funds will be allocated in Colorado; and

WHEREAS, to maximize recovery from the variety of lawsuits filed by the state and local governments across the nation, including Larimer County, the State of Colorado is requesting that as many state and local governments as possible sign on to the State of Colorado Memorandum of Understanding.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. The Board of Trustees approves the Colorado Opioids Settlement Memorandum of Understanding dated August 26, 2021, and authorizes Mayor Troy Hamman to sign the same on behalf of the Town of Wellington.

2. The Board of Trustees authorizes Mayor Troy Hamman to sign the following related documents on behalf of the Town of Wellington:

    a. The *Subdivision Settlement Participation Form* that releases legal claims against *Johnson & Johnson.*
    b. The *Subdivision Settlement Participation Form* that releases legal claims against *AmerisourceBergen, Cardinal Health, and McKesson.*
    c. The *Colorado Subdivision Escrow Agreement.*

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 5th day of November, 2021.

TOWN OF WELLINGTON, COLORADO

By:______________________

Troy Hamman, Mayor

ATTEST:

____

Krystal Eucker, Town Clerk

TOWN OF WELLINGTON SEAL COLORADO

TOWN OF
WELLINGTON

Board of Trustees Meeting

Date:	**January 24, 2023**
Subject:	**Resolution No. 05-2023 - A Resolution of the Board of Trustees of the Town of Wellington Making Appointments to the Wellington Parks, Recreation, Open Space and Trails Advisory Board**

BACKGROUND / DISCUSSION

The Parks, Recreation, Open Space and Trails Advisory Board (PROST) consists of seven at-large voting members. THe PROST Advisory Board advises the Board of Trustees related to development and operation of the Town's park systems and recreation programs.

On January 23, 2023, members of the Board of Trustees and PROST staff liaison Billy Cooksey conducted interviews for the current vacancies. Pursuant to those interviews, it is being recommended that the following individuals be appointed:

- Appointment of John Evans to the Wellington Parks, Recreation, Open Space and Trails Advisory Board to a term ending in January, 2027.
- Appointment of Robert Sausaman to the Wellington Parks, Recreation, Open Space and Trails Advisory Board to a term ending in January, 2027.

STAFF RECOMMENDATION

1. Approve Resolution No. 05-2023 - A Resolution of the Board of Trustees of the Town of Wellington Making Appointments to the Wellington Parks, Recreation, Open Space and Trails Advisory Board
2. Approve Resolution No. 05-2023 with amendments as the Board of Trustees deems appropriate.
3. Postpone consideration of Resolution No. 05-2023 to a specific date and time and provide staff direction regarding additional information or amendments
4. Vote to deny Resolution No. 05-2023

ATTACHMENTS

1. Reso No. 05-2023_PROST Appointments
2. John Evans_Redacted
3. Robert Sausaman_Redacted

TOWN OF WELLINGTON

RESOLUTION NO. 05-2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON MAKING APPOINTMENTS TO THE WELLINGTON PARKS, RECREATION, OPEN SPACE AND TRAILS ADVISORY BOARD

WHEREAS, the Board of Trustees of the Town of Wellington, Colorado (the "Board") has adopted and reenacted the Wellington Municipal Code (the "Code"); and

WHEREAS, the Code provides for appointment of a Wellington Parks, Recreation, Open Space and Trails Advisory Board Member as called for by Chapter 2, Article 13; and

WHEREAS, Section 2-13-20 of the Code provides that membership terms of members of the Wellington Parks, Recreation, Open Space and Trails Advisory Board shall be four (4) year staggered terms; and

WHEREAS, the Wellington Parks, Recreation, Open Space and Trails Advisory Board currently has one (1) vacant seat with a term expiring January of 2026 and three (3) vacant terms expiring January 2027; and

WHEREAS, The Town accepted applications for candidates to fill the vacancies; and

WHEREAS, candidates were interviewed on January 23, 2023, and recommendations were made to fill vacant seats.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. Appointment of John Evans to the Wellington Parks, Recreation, Open Space and Trails Advisory Board to a term ending in January, 2027.
2. Appointment of Robert Sausaman to the Wellington Parks, Recreation, Open Space and Trails Advisory Board to a term ending in January, 2027.
3.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 24th day of January, 2023.

TOWN OF WELLINGTON

By: ______________________________
Calar Chaussee, Mayor

ATTEST:

____
Patti Garcia, Town Administrator/Interim Town Clerk

From:	noreply@civicplus.com
To:	Mahalia Henschel; Patti Garcia; Hallie Sheldon
Subject:	Online Form Submittal: Application for Board or Commission Vacancy
Date:	Wednesday, December 14, 2022 7:18:42 PM

Application for Board or Commission Vacancy

Eligibility Requirements
- Board/Commissions that require 1-year residency

Which board or commission would you like to be appointed to?	Parks Advisory Board
Name	John Evans
Address	[redacted]
City	Wellington
State	CO
Zip Code	80549-1834
Home Phone Number	[redacted]
Work Phone Number	*Field not completed.*
Cell Phone Number	*Field not completed.*
Email Address	[redacted]
Wellington Resident (Number of Years/Months)	6 yrs 8 months
Current Occupation	Construction
Please list any relevant education, employment, or volunteer experience you have.	I have been serving on the parks board since 2018.
Are you currently serving on any other board or commission?	Yes
Have you attended a	Yes

meeting of the board or commission you are applying to?	
Why do you want to become a member of this particular board or commission?	To continue the work we have been working on since I joined the board. I also would like to begin new projects and provide more opportunities for Wellington residents.
What do you believe are the 3 most important issues that this board or commission have now or will have in the next few years?	Continuation of the trail system, providing more recreation opportunities for residents, and providing quality outdoor space for every resident.
Please specify any activities you are involved in that may create a conflict of interest should you be appointed to this board or commission.	None

Signature

Upon application for and acceptance of appointment, board and/or commission members demonstrate their intention and ability to attend meetings. If appointed, frequent non-attendance may result in termination of appointment.

I hereby declare, that if appointed, I will accept the appointment assigned to me by the Town of Wellington Board of Trustees.

By signing below, I swear and/or affirm that to the best of my knowledge, the information I have provided in this application is true and correct.

Signature of Applicant	John Evans
Date	12/17/2022

From:	noreply@civicplus.com
To:	Mahalia Henschel; Patti Garcia; Hallie Sheldon
Subject:	Online Form Submittal: Application for Board or Commission Vacancy
Date:	Tuesday, January 3, 2023 10:41:27 AM

Application for Board or Commission Vacancy

Eligibility Requirements
- Board/Commissions that require 1-year residency

Which board or commission would you like to be appointed to?	Parks Advisory Board
Name	Robert Sausaman
Address	[redacted]
City	wellington
State	co
Zip Code	80549
Home Phone Number	[redacted]
Work Phone Number	*Field not completed.*
Cell Phone Number	*Field not completed.*
Email Address	[redacted]
Wellington Resident (Number of Years/Months)	*Field not completed.*
Current Occupation	*Field not completed.*
Please list any relevant education, employment, or volunteer experience you have.	PAB member for two years
Are you currently serving on any other board or commission?	Yes
Have you attended a	Yes

meeting of the board or commission you are applying to?	
Why do you want to become a member of this particular board or commission?	To continue the growth of the parks and rec department.
What do you believe are the 3 most important issues that this board or commission have now or will have in the next few years?	Completing the trails and sidewalk to the High School Funding Completing smaller projects.
Please specify any activities you are involved in that may create a conflict of interest should you be appointed to this board or commission.	None

Signature

Upon application for and acceptance of appointment, board and/or commission members demonstrate their intention and ability to attend meetings. If appointed, frequent non-attendance may result in termination of appointment.

I hereby declare, that if appointed, I will accept the appointment assigned to me by the Town of Wellington Board of Trustees.

By signing below, I swear and/or affirm that to the best of my knowledge, the information I have provided in this application is true and correct.

Signature of Applicant	Robert Sausaman
Date	1/3/2023

Board of Trustees Meeting

Date: January 24, 2023

Subject: Ordinance 01-2023 - An Ordinance Amending the Town of Wellington Marijuana Ordinance

- **Presentation: Dan Sapienza, Town Atttorney**

BACKGROUND / DISCUSSION

Attached is a proposed ordinance regarding marijuana that addresses some issues that have been raised around marijuana licensing. This ordinance was last discussed at the January 10, 2023 meeting of the Board of Trustees. Included in the packet are some additional communications from interested parties proposing various changes to the Town's marijuana code.

In particular, this ordinance is intended to create a path for parties desiring a reduced setback limit to request a variance through the Board of Adjustment, as with any other variance request. It also fixes an issue with Residential Zoning that has been identified and includes a suggestion from our Licensing Authority regarding hearings.

1. Apply the 200-foot setback from residential properties to R-3 zoning as well. The referred ordinance only requires a 200-foot setback from R-1, R-2, and R-4 properties, but in the new (proposed) zoning map, there will be R-3 zoning. It seems that the intent of the referred ordinance was to have uniform setbacks from all residential properties, so the attached adds R-3 properties to the list. Without this change, if properties are zoned as R-3, there would be no required setback from those properties.

2. Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.

   The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.

   The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.

3. Add requirements for applicants to allow the LLA to look at neighborhood wishes and suitability of the applicant. As has been discussed previously, neighborhood wishes and suitability of an applicant are not issues on which the LLA may base decisions for issuance of a marijuana license. At present, neighbors wishing to fight a marijuana application in their area would not be allowed to present evidence at a public hearing for a marijuana license, as their views may not be considered in the LLA's decision-making. This change would make a public hearing regarding a marijuana application more similar to a liquor license application hearing and would allow for more public input into the LLA's decision-making.

STAFF RECOMMENDATION

Motion Options

- Move to approve Ordinance No. 01-2023 - An Ordinance Amending the Town of Wellington Marijuana Ordinance as proposed.
- Move to approve Ordinance No. 01-2023 with amendments as the Board of Trustees deems appropriate.
- Move to postpone consideration of Ordinance No. 01-2023 and provide guidance to staff as requested modifications.
- Move to deny Ordinance No. 01-2023

ATTACHMENTS

1. Ord 01-2023_Marijuana Amendments
2. Letter from Lacoste LLC re: marijuana ordinance proposals
3. Konope Consulting Proposal
4. Letter from Smokin' Cowboy re proposed ordinance
5. Letter from Piper Ogden re proposed ordinance
6. Dec. 13 Work Session Packet (1)

TOWN OF WELLINGTON

ORDINANCE NO. 01-2023

AN ORDINANCE AMENDING THE TOWN OF WELLINGTON MARIJUANA ORDINANCE

WHEREAS, in 2021, proponents of a ballot measure filed with the Town of Wellington an initiated ordinance that would allow the sale of marijuana within the Town of Wellington; and

WHEREAS, the initiated ordinance included setbacks for marijuana licenses that would prohibit issuance of a marijuana store license for premises within 2,000 feet of any school or preschool, 500 feet of any public property or other marijuana license, and 200 feet of any R-1, R-2, or R-4 residential district; and

WHEREAS, following successful citizen protests over the sufficiency of the petition for the proposed initiated ordinance, lawsuits were filed against the Town of Wellington to require referral of the measure on the ballot; and

WHEREAS, the Town of Wellington and the plaintiffs in those lawsuits settled the matter by negotiating through counsel a slightly modified ordinance that would fix many of the errors in the original proposed initiative; and

WHEREAS, at the November, 2021 general election, the voters of the Town of Wellington adopted the referred measure allowing the operation of retail and medical marijuana stores in the Town of Wellington; and

WHEREAS, the adopted ordinance included language that it could not be modified by the Town of Wellington Board of Trustees until January, 2023; and

WHEREAS, the adopted measure includes provisions that could cause uncertainty for potential applicants and omissions that would allow marijuana stores close to R-3 zone districts; and

WHERE, the Town of Wellington Local Licensing Authority for marijuana licenses recommends that the adopted ordinance be amended further to require that the licensure process include consideration of neighborhood needs and desires and other important concerns for the Town of Wellington; and

WHEREAS, the Wellington Board of Trustees desires to amend the Wellington Marijuana to address these concerns while ensuring that the voters' desires as expressed in the vote for the measure in 2021 are preserved.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Wellington, Colorado:

SECTION 1

Chapter 2, Article 14, Section 40 is amended to read in its entirety:

Sec. 2-14-40. Applications—Licenses.

(a) An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

(b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. The Local Licensing Authority shall consider the needs of the affected neighborhood and the desires of the affected neighborhood's residents and businesses, including the employees of those businesses, as evidenced by petitions, remonstrances, testimony, or otherwise. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

SECTION 2

Chapter 2, Article 14, Section 70 is amended to read in its entirety:

Sec. 2-14-70. Restrictions for applications for marijuana store licenses.

(a) The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

(1) Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.

(2) Until it is verified by the Planning Director or their delegee that the Premises complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:

a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and

b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and

c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential Rural Density District), R-2 (Residential Low Density District), R-3 (Residential Medium Density District) and/or R-4 (Downtown Neighborhood District).

(b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.

(c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Section 3. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.

Section 4. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

Section 5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 10th day of January, 2023 and ordered to become effective 30 days from the date of publication.

TOWN OF WELLINGTON, COLORADO

By:______________________________
Calar Chaussee, Mayor

ATTEST:

____
Patti Garcia, Town Administrator/Interim Town Clerk

C. DEAN HERMS, JR.
JEFFREY B. CULLERS
RICK ZIER, OF COUNSEL

HERMS & CULLERS, LLC
ATTORNEYS AT LAW

3600 South College, Suite 204
Fort Collins, Colorado 80525
(970) 498-9999 Telephone
(970) 472-5365 Facsimile
jeff@hhlawoffice.com

January 20, 2023

Dan Sapienza
Town of Wellington
1312 S College Ave.
Fort Collins, CO 80524
Via email, dan@mosllc.law

Re: Town of Wellington Ordinance 01-2023

Dear Mr. Sapienza,

I represent Lacoste LLC and its principal, Michael "Scoo" Leary. My client and I understand that the Town of Wellington is considering amendment to the Marijuana Ordinance adopted by the voters of the Town of Wellington in November 2021. The purpose of this communication is to bring to the attention of the Board of Trustees a problematic outcome of the current Marijuana Ordinance as applied to Lacoste LLC and suggest ways to correct this outcome.

As you may be aware, Lacoste LLC has been seeking to establish a marijuana dispensary within the Town of Wellington for some time. Currently, Lacoste LLC is under contract to purchase a portion of 3997 Water Lily Dr. Wellington, CO (the "Lacoste Parcel"). The Lacoste Parcel is located directly north of a property owned by the Town of Wellington in which the sole use is as a floodwater detention area (the "Detention Property"). There is no other development of the Detention Property. This Detention Property is currently zoned "Public."

The Marijuana Ordinance is codified at Chapter 2, Article 14 of the Wellington Municipal Code. The specific code provision at issue is § 2-14-70(a)(2)(b), which states as follows:

> b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License;

Lacoste LLC's intended marijuana dispensary on the Lacoste Parcel does not comply with the foregoing setback requirement. Lacoste LLC has applied for a setback variance, but was denied.

I believe that we can all agree that there is no apparent public policy rationale served by imposing any setback between the Detention Property and Lacoste LLC's proposed dispensary on the Lacoste Parcel. The Detention Property will likely be undevelopable for the foreseeable future and does not carry any use that could be considered incompatible with a dispensary like the other provisions in § 2-14-70(a)(2). These other provisions impose setbacks from schools, residential areas, and other marijuana establishments.

I understand that all the properties zone "Public" are owned by the Town of Wellington. I believe the voters of Wellington, in adopting the setback from "Public" zoned properties, had good intentions because most of the "Public" zoned properties are city parks or open space, and include vast areas along Boxelder Creek. Indeed, the Land Use Code describes the "Public District" zone as follows:

> The Public District is intended to identify and perpetuate the existence of public parks, playgrounds, recreation facilities and public and quasi-public buildings, whether publicly owned or leased. These areas are intended to support the community with accessible walkways, public gathering spaces, and motorized and non-motorized transportation connections and parking that accommodate a large influx of car and pedestrian traffic […]. Land Use Code § 3.04.3 P.

Despite the above language, the Land Use Code allows other, less "sensitive" uses in the Public District, such as the following: resource extraction, communication facility, solid waste facility, and "Public Facilities." The definition of "Public Facilities" is very broad and includes utility infrastructure and flood control like what exists on the Detention Parcel. Based on the above analysis, it is clear that while well-intentioned, imposing setbacks based solely on a property being zoned "Public" is a rather blunt tool to achieve the apparent policy purpose of separating marijuana dispensaries from public parks and open space. Application of this policy to Lacoste LLC's intended property illustrates the problem.

In order to fix this problem with the Marijuana Ordinance, on behalf of Lacoste LLC, I propose that § 2-14-70(a)(2) of the Marijuana Ordinance be amended to eliminate the 500-foot setback that applies to any parcel zoned "Public."

Alternatively, the setback for parcels zoned "Public" could be narrowed so it only applies when the parcel has a recreational or "gathering space" use. The following amendment would achieve that goal:

> b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) that contain a Community Facility or Civic Space as such terms are defined in the Land Use Code, or any parcel containing another retail or medical marijuana store License;

I have looked into how the Land Use Code defines "Community Facility" and "Civic Space" and they appear consistent with the goal of separating marijuana dispensaries and sensitive uses that would involve children. "Community Facility" is defined as follows:

> **Community Facility** A place, structure, area, or other facility used to provide fraternal, cultural, social, educational, or recreational programs or activities. This

> includes swimming pools, tennis courts, and similar facilities of a homeowners association, open to the public or a designated part of the public, and which may be publicly or privately owned.

The definition of Civic Space is lengthy, but in a nutshell it includes public or quasi-public gathering spaces and public open space. Clearly, flood control infrastructure such as what occupies the Detention Parcel immediately south of the Lacoste Parcel would not be included.

I respectfully request that the Board of Trustees carefully consider the analysis in this letter and take one of the actions proposed to fine-tune the Marijuana Ordinance so that it yields logical outcomes while still respecting the intentions of the voters in 2021. If you have any questions, do not hesitate to contact me.

Very Truly Yours,

/s/ Jeffrey B. Cullers

Jeffrey B. Cullers

Explanation of Proposed Changes to the Wellington Marijuana Dispensary Ordinance
Article 14 – RETAIL AND MEDICAL MARIJUANA STORES

Colin Mudd
Konopé Consulting, LLC
Founder and Principal Consultant

January 11th, 2023

To whom It May Concern:

I am writing this proposal on behalf of myself and my company, Konopé Consulting. I do not represent any other applicant or potential applicant at this time. The town needs more perspective and context regarding common sense changes to the Code. The goal is to promote the will of the voters while also keeping the residents of the Town of Wellington safe and protected from any adverse consequences to the community.

I have over 13 years of experience in the Colorado cannabis industry. I believe I can provide additional information that will help inform the Board of Trustees and assist them in making the right decision regarding changes in the code for Medical and Retail Marijuana Stores. I specialize in compliance, training, and licensing for licensed cannabis companies in Colorado and other markets in the US. I worked with the MED and lawmakers at the State Capital to help create changes to Responsible Vendor Training last year with HB22-1222. I have a contract with the Town of Moffat to inspect their licensed facilities at Area 420. I have worked with various other municipalities in CO to educate lawmakers on common-sense approaches to regulating cannabis facilities. I appreciate the opportunity to help in any way I can. My hope is that members of the Town Board of Trustees and the Town Attorney will consider these proposed changes before their final vote later on in January or February if it takes that long. My first ask is, please don't rush this.

I want to be clear; I do not want the Town of Wellington overrun with dispensaries. The proposed changes would allow, in my opinion, approximately 4 dispensaries to be open in the town. If there is an abundance of dispensaries, the Town can one day put a moratorium in place that would allow the Board to determine if a permanent cap on the number of dispensaries is needed. Having that discussion in 2024 or 2025 is inevitable.

I applaud the Town for providing an opportunity that hasn't existed in Colorado since 2013. If a potential business owner wants to open a store, they can, so long as they comply with all state and local regulations. I ask that for 2023, you do what you can to help small businesses or mom-and-pop businesses open and succeed.

A lottery system with a cap on licenses caters to applicants with a considerable amount of resources that small businesses don't have. Additionally, a limited license municipality provides an undue burden on applicants trying to find a location, as a landlord can extort applicants for more money per month in order for the applicant to have a chance at opening one of the coveted licensed facilities. My proposed changes are intended to allow an open market and competition that, as we all know, is the bedrock of our capitalistic society.

With all that being said, my first proposal is to add Light Industrial, C-1, and C-2 zone-use districts to the approved list for dispensary operations. Simply put, dispensaries are no different from any other retail outlet. With the current and proposed Zone Use Maps, Wellington can accommodate dispensaries in those additional Zone Use Districts. Please remember that no one with Public Policy or Planning and Zoning expertise wrote the Ballot Measure in 2021. I believe having just one Zone-Use District is arbitrary and accomplishes nothing but limiting the number of dispensaries in Town. But as I stated above, there are other ways to achieve the result of not being overrun with too many dispensaries. Having one Zone-Use District is not the most efficient or an equitable means to an end.

My second proposal is to eliminate the 200-foot setback from Residential Zone Use Districts. Again, this is entirely arbitrary and does nothing to accomplish anything other than restrict the number of dispensaries in town. A dispensary is no more or less a nuisance within 200 feet as they are outside 200 feet from a residential zone-use district line. I fail to see what this setback accomplishes by way of public health and safety. If the smell is a concern, ask the stores to have an Odor Control Plan. If being a good community member is a concern, ask the stores to create a community engagement or social impact plan. If traffic is a concern, please remember that they operate in a Light Industrial, C-1, C-2, or C-3 (hopefully) zone district where retail use is approved. Traffic to the dispensary is the point, which means there will be excise money for the Town. A community engagement plan and an odor control plan eliminate any possible concerns from the community members and require the dispensary to uphold a good moral standing with the community they operate in. Also, keep in mind that the smell from a dispensary is limited and can be remediated with carbon filtration, which is not expensive for the dispensary to cover annually. A community engagement plan could be an opportunity to allow the dispensary to give a corrective action preventative action plan for potential situations that could negatively affect a member of the immediate community. Upkeep and compliance with these plans can be added to the Town’s annual inspections and renewal applications.

My third proposal is to eliminate the 500-foot setback from IN-HOME DAYCARES. A licensed daycare facility is more like a preschool and should be separate from an in-home licensed daycare facility. Suppose there is Kinder Care or Early Learning facility in a municipality. In that case, those operate differently and with more kids of an older age than an in-home daycare facility does. They are like a preschool.
Additionally, this particular requirement has already been exploited and is ripe for further corruption. A well-resourced applicant could buy out a daycare facility that stands in their way of approval, removing an affordable daycare option for the Town. Conversely, a community member opposed to a dispensary can easily and quickly apply for an in-home daycare license to stop a dispensary from opening within 500 feet of their home. Or, a competitor could apply for an in-home daycare license in a home 400 feet away to prevent their competition from opening a store. These facts alone make this setback requirement a poor attempt at limiting the number of dispensaries.

As I have mentioned numerous times, there are other ways of accomplishing a limited number of dispensaries other than this. I also need to find out where it states that an in-home daycare is subject to setbacks. A daycare is listed in the definition of a School but not specifically an IN-HOME DAYCARE, just a daycare. In that case, dispensaries should be 2000 feet away from all daycare facilities. We need to re-evaluate the definition of a school. Please remove daycare from the definition. I believe the intention is to protect school-aged children, and I am all for ensuring children stay safe from accidental ingestion or consumption of cannabis or cannabis products. However, with the compliance requirements for all dispensaries in Colorado, and a 95% plus rating with underage compliance checks from the Marijuana Enforcement Division, dispensaries are not selling to underage children who take advantage of in-home daycare services. Please don’t allow this to be used as a tactic to limit competition or have it lead to the closure of more affordable in-home daycare facilities.

My fourth proposal is to replace the Public zone-use district as one of the protected zone-use districts and replace it with Parks. A drainage ditch in a public zone-use district should be able to have a dispensary near it, where a park may have children, and that is reasonably argued as a place that needs protecting in the Town of Wellington.

If I am not mistaken, so long as the Town clearly states that Zone-Use Variance Requests are not available for dispensary licenses, the risk of litigation against the town is mitigated. Please make the requirements black and white for applicants and remove the possibility of corruption or biases that will inevitably apply to Zone-Use Variance Requests. Simply put, tell the dispensaries where they can operate and where they can’t and allow open, capitalistic competition amongst potential business owners. Like any regular business is allowed to do.

It’s either one or the other. You allow variance requests or change the setbacks to enable more dispensaries to open compliantly. If you allow both a variance request option and keep the setbacks as arbitrary as they are, there will be an influx of Zone-Use Variance requests that the Town won’t be able to manage, given the current budget and staffing for 2023. I believe the biases and possible corruption of the Variance Request Board leave the town open for litigation more so than removing variance requests as an option for dispensaries.
In other words, if you allow variance requests and set determined criteria for approving zoning variance requests, you eliminate biases and potential corruption. In that case, you might as well make the criteria to get a zoning variance request approved a permanent change in the code, eliminating the need for variance request hearings.

I’ve repeatedly heard ‘the Board must follow the Will of the voters’. To that point, I say this; the voters voted for the Board of Trustees to make decisions to better the community and protect public health and safety. The Board must remember that the voters voted to have operational dispensaries in the Town of Wellington. As of today, Jan 11, 2023, there are none. There are no operational dispensaries because the Ballot measure was riddled with arbitrary zoning requirements intended to allow a small number of applicants to take advantage of the regulations. After more than a year, it is clear that what the voters voted on has not come to fruition. It is up to the members of the Board to use the resources at their disposal, planning and zoning department expertise, and stakeholder feedback to correct the mistakes from the Ballot measure and carve a new path to operational dispensaries in the Town of Wellington. More so, to start collecting the excise tax revenue and add it to the Town's annual budget.

Please stop perpetuating the mistakes of the ballot measure and remind yourself that the voters intended to have operational dispensaries in the town and tax those operational dispensaries. Neither of those intentions has been followed up to this point, and it is up to the Board to do something to fix the code, using all the resources and information that they have at their disposal. Information and resources that were not available to the voters in 2021.

I will end with this. Please remember that the voters also voted to allow the Board of Trustees to change the code as they see fit, starting in 2023. This is it. It's 2023 now. Don't let the Will of the voters be lost in arbitrary setbacks, and make the best decision possible for the Town of Wellington.

Respectfully,

Colin Mudd
Founder and Principal Consultant
Konopé Consulting

Full Text of Measure:

Passage of the Ordinance to be referred to the voters of the Town of Wellington:

TOWN OF WELLINGTON

ORDINANCE NO XX-2021

Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

WHEREAS Article XVIII, Sections 14 and 16 of the Colorado Constitution. allow the personal and medical use of marijuana in Colorado subject to local; and

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution and applicable laws allowed the Town of Wellington, Colorado (the "Town") to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or Retail Marijuana Stores and the Town enacted an ordinance prohibiting such operations.

WHEREAS, a citizen initiative was submitted to the Wellington Town Clerk to allow the sale of retail and medical marijuana and the petition was found by a C.R.S. §31-11-110 hearing officer to not be sufficient and the petition therefore was not submitted to the voters of the Town..

WHEREAS, it is unclear to the Wellington Town Board of Trustees (the "Town Board") whether the voters wish to see the sale of medical and retail marijuana allowed in the Town and the Town Board feels that the question of whether retail or medical marijuana sales should be allowed in the Town should be decided by the Town's voters.

WHEREAS, members of the Town Board have voiced a willingness, if flaws in the previously submitted initiated ordinance can be addressed that the Town Board might be willing to refer the question of whether retail and medical marijuana should be allowed in the Town to the Town's voters and there has been a further willingness to refer an initial regulatory scheme to the Town's voters so long as the Town Board would have full authority to modify the regulatory scheme after following January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON COLORADO UPON APPROVAL BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON. COLORADO, THAT:

Section 1. Articles 13.5 of Chapter 16 and Article 13.6 of Chapter 2 of the Wellington Municipal Code are hereby repealed in their entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 - RETAIL AND MEDICAL MARIJUANA STORES

Sec. 2-14-10 Purpose.

A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.

B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell retail marijuana or medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Sections 14 and 16 of Article XVIII of the State Constitution and Article 10 of Title 44, C.R.S. and 1 CCR 212-3 (the "Colorado Marijuana Code").

Sec. 2-14-20 Powers and Duties of the Local Licensing Authority.

A. The Local Licensing Authority shall grant or deny local Licenses for the distribution and sale of retail marijuana or medical marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.

B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana to be consistent with state law for the enforcement of this Article.

C. This Article 14 incorporates the requirements and procedures set forth in the Colorado Marijuana Code. The Local Licensing Authority adopts the provisions and restrictions set forth in Colorado Marijuana Code and regulations for all Licensees not explicitly addressed within this Article. In the event of conflict between the provisions of this Article and the Colorado Marijuana Code, the more restrictive provision shall control.

D. On and after February 1, 2022, the Local Licensing Authority shall begin processing applications under this Chapter and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Article so long as the conditions set forth in this Article are met and the applicant has paid the operating fee and any other fees required by this Article. Local Licensing Authority fees (exclusive of State fees) for applications shall not exceed $5,000.00.

Sec. 2-14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in Article XVIII, Sections 14 or 16 of the Colorado Constitution and the Colorado Marijuana Code. C.R.S. §44-10-101, *et seq.* and C.R.S. §25-1.5-101, *et seq.* unless varied hereunder:

Colorado Marijuana Code: Article 10 of Title 44 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to sell retail and/or medical marijuana in accordance with the provisions of the Colorado Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington shall serve as the Local Licensing Authority unless the Town Board creates a separate Local Licensing Authority empowered to act in such capacity.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Medical marijuana store A "Medical marijuana business" as defined by the Colorado Marijuana Code but only including a medical marijuana store, and not including a medical marijuana cultivation facility, a medical marijuana products manufacturer, a medical marijuana testing facility, a marijuana research and development licensee, a medical marijuana business operator, or a medical marijuana transporter.

Parks: To be defined by Zoning and Town Attorney

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Protected Use: Those uses defined in Sec. 2-14-70 including Schools, Parks, ~~parcels zoned P (Public District)~~ or any parcel containing another Retail or Medical Marijuana Store License. ~~or parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).~~

Retail Marijuana Store: A “Retail Marijuana Business” as defined by the Colorado Marijuana Code but only including a retail marijuana store and not including a retail marijuana cultivation facility, a retail marijuana products manufacturer, a marijuana hospitality business, a retail marijuana hospitality and sales business, a retail marijuana testing facility, a retail marijuana business operator, or a retail marijuana transporter.

School: A public or private preschool, ~~including a licensed daycare~~ or a public or private elementary, middle, junior high, or high school, college, or principal campus of a college (and including the new Middle / High School at Wellington, not open as of the date of adoption of this ordinance).

State Licensing Authority: The Colorado Department of Revenue, Marijuana Enforcement Division, created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of retail and medical marijuana in this State, pursuant to Articles 10 of Title 44 C.R.S. and Colorado Marijuana Rules 1 CCR 212-3, and other Colorado applicable statutes as applicable and incorporated in the Colorado Marijuana Code.

Sec. 2-14-40 Applications-Licenses.

An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed retail and/or medical marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

Sec. 2-14-50 Denial of Application.

A. The Local Licensing Authority shall deny a Local License application as provided for by the Colorado Marijuana Code and regulations promulgated thereunder, and if the application contains any false, misleading information. If an application is determined incomplete by the Local Licensing Official, the applicant will be notified and be given seven (7) days to remedy and supplement the application to conform to this Article or the application may be denied.

B. The Local Licensing Official shall consider and act upon all applications in accordance with the standards of this Article and in compliance with the Colorado Marijuana Code and regulations. The Local Licensing Authority shall deny any application that is not in full compliance with this Article.

C. The Local Licensing Authority shall formulate a list of all additional requirements if needed in addition to the forms provided by the State Licensing Authority.

D. If the Local Licensing Authority denies a License, the applicant shall be entitled to a hearing.

E. If an application is denied, the Local Licensing Authority shall set forth in writing the grounds for denial.

Sec. 2-14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Marijuana Code and applicable state regulations.

Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses.

A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

1. Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.

2. The approval of the application for Licensure for a Retail or Medical Marijuana Store License complies with all zoning ordinances and said zoning ordinances shall be amended as follows:

   Retail or Medical Marijuana Store Licenses shall only be permitted in the **Light Industrial, C-1, C-2, and** C-3 zoning districts. In addition, the following setbacks will apply:

   a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and

   b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of Parks, ~~parcels zoned P (Public District)~~ or any parcel containing another retail or medical marijuana store License; ~~and~~

   c. ~~Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).~~

B. In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section.

C. The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Sec. 2-14-80 Transfer of Ownership.

A. A Local License granted under the provisions of this Article shall not be transferable except as provided in this Section, but this Section shall not prevent a change of location as provided in the Colorado Marijuana Code.

B. For a transfer of ownership, a Licensee shall apply to the State Licensing Authority and Local Licensing Authority on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority may charge a fee not to exceed $1,000.00 to process such transfer and shall permit a transfer of ownership pursuant to this Article in conjunction with the Colorado Marijuana Code.

Sec. 2-14-90 Licensing Renewal.

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration with a Local Licensing Authority renewal application fee of $1,500.00. The Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold hearings on Licensing renewal applications including for good cause. Good Cause for purposes of this Section shall mean:

1. The Licensee renewal applicant has violated or has failed to comply with any terms, conditions, or provisions of this Article or the Colorado Marijuana Code or any supplemental law; ordinance; or regulation; or

2. The Licensee has been operated in a manner that adversely affects the public health or welfare of the immediate neighborhood in which the establishment is located.

B. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License has been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee paid to the Local Licensing Authority of $500.00 in addition to the License renewal fee paid to the Local Licensing Authority and any fees due to the State Licensing Authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until final action to approve or deny the Licensee's renewal application.

C. Notwithstanding the amount specified for the Late Application Fee, the Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, may reduce the amount of the renewal application and/or the late application fee.

Sec. 2-14-100 Fees.

Every Retail and Medical Marijuana Store Licensee shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Local Licensing Authority and set by resolution, but in no event shall either fee payable to the Local Licensing Authority exceed five thousand dollars ($5,000.00).

Sec. 2-14-110 Hours of Operation.

A Retail or Medical Marijuana Store Licensee may engage in the sale of marijuana and marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Local Licensing Authority may at its discretion extend, but not further limit, such hours of operation.

Sec. 2-14-120 Disciplinary Actions: Suspension-Revocation-Fines.

A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.

B. The Local Licensing Authority may take disciplinary action for violations by Licensee or any agent, manager, or employee of Licensee of the Colorado Marijuana Code or this Article.

C. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of all or any portion of a suspension and may hold all or part of any suspension in abeyance on conditions set by the Local Licensing Authority. When determining whether to impose a fine in lieu of a suspension the Local Licensing Authority may make findings that:

1. The public safety, health and welfare would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes:

2. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and

3. The Licensee has not had its License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision in relation to a penalty for violations pertaining to the Licensee.

D. The fine accepted shall be: (a) not less than five-hundred dollars ($500.00) nor more than two thousand five-hundred dollars ($2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of Premises, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars ($1,000.00) nor more than ten-thousand dollars ($10,000.00) for violations that have an immediate impact on the public health, safety, or welfare.

E. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.

F. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension, if the fine is paid to a Local Licensing Authority.

G. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority and Licensee shall be, upon request, afforded a hearing within thirty (30) days.

Sec. 2-14-130 Inspection of Books and Records-Inspection Procedures.

A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.

B. The Licensed Premises, including any places of storage where retail or medical marijuana is stored, sold, or dispensed shall be subject to inspection by the Local Licensing Authority and its investigators, during all business hours for the purpose of inspection or investigation and for examination of any inventory or books and records required to be kept by the Licensee. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay. and, upon request by authorized representatives of the Local Licensing Authority, the Licensee shall open the area for inspection.

C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 2-14-140 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only Retail Marijuana Store and Medical Marijuana Store Licenses upon payment of a fee and in compliance with all Local Licensing requirements to be determined by the Local Licensing Authority.

Sec. 2-14-150. Other Marijuana Licenses Prohibited.

A. Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail and/or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

B. The Local Licensing Authority declares that, should any provision, section, paragraph, sentence, or word of this Article be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Article as hereby adopted shall remain in full force and effect.

Section 3. Subject to the following, prior to January 1, 2023 modification of the provisions of this ordinance shall require approval of the voters of the Town of Wellington, Colorado. Following January 1, 2023, the Town Board may modify, or repeal this ordinance by ordinance of the Town Board, prior to January 1, 2023, the Town Board may modify this ordinance by ordinance of the Town Board to comply with the Colorado Marijuana Code or other state statute or state regulation.

Section 4. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 6. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

GARD LAW FIRM, LLC
Attorneys At Law

January 2, 2023

VIA ELECTRONIC MAIL
Town Attorney Daniel Sapienza
dan@mosllc.law
Town Administrator Patti Garcia
garciapa@wellingtoncolorado.gov

Re: Marijuana Businesses in Wellington
(Proposed Changes to Variance Process)

Dear Mr. Sapienza and Ms. Garcia,

Please be advised that we represent Smokin' Cowboy, LLC, a business currently seeking marijuana licensure in the Town of Wellington. We were given notice of proposed changes related to marijuana business license variances to be discussed at the January 10, 2023 meeting and submit this letter for the Board of Trustee's consideration. The proposed change was discussed at the December 13, 2022 Board of Trustees Work Session and reads as follows:

> *Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.*
>
> *The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.*
>
> *The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.*

While we agree that there should be additional clarity regarding the relationship between zoning variances and licensing authority setback determinations, we disagree with the proposed solution. Zoning and setback requirements meet separate community goals and should not be conflated as the same requirement. Zoning determinations simply speak to the character of the proposed use when compared to the surrounding neighborhood. Setback requirements address business density and additional sensitive uses that may not be considered in a variance review.

Of note, Wellington's Land Use Code already addresses this type of issue in its Purpose and Applicability sections (with emphasis added):

2.22 Variance

> *2.22.1 Purpose. A variance provides relief from the strict application of a standard to a specific site that would create an unnecessary hardship or practical difficulties on all reasonable use of the property.*
>
> *2.22.2 Applicability. Variances may be sought for relief from dimensional and numerical standards of this Land Use Code. <u>Variances may not be sought to vary the allowed use on a property.</u>*

Those sections are clear that variances are not intended to impact the use of a property and may only vary the "strict application" of "dimensional and numerical standards." Setback requirements like those found in Sec. 2-14-70 are related to the use of the property to ensure that business density and sensitive uses like schools and residential properties are not unduly impacted. Additionally, Sec. 2-22-2 is specific in its intent to apply to "standards of this Land Use Code." The marijuana setbacks are not found in the Land Use Code and the variance standards do not apply.

In addition to the inapplicability of the variance standards to marijuana setbacks, the Local Licensing Authority is not permitted to address applications that do not comply with Sec. 2-14-70, without exception for actions under the Land Use Code (with emphasis added):

> *Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses. The Local Licensing Authority <u>shall not receive or act upon an application for the issuance of a Local License pursuant to this Article</u>:*

The proposed change found in the Work Session document would require an expansion of the scope of variances as well as an expansion of the Local Licensing Authority's powers, neither of which were anticipated by the voters when they voted in favor of allowing marijuana businesses to enter Wellington. This is not a simple clerical fix and fundamentally changes the Town Code in a way that could not have been considered by the voters.

Our final concern related to the proposed solution is the timing of variance and setback review. A variance may be obtained for a property well in advance of submitting a marijuana license application. If an approved variance requires the Local Licensing Authority to disregard setbacks, they would not be able to consider other marijuana businesses or daycares that opened in the interim period, resulting in possible density issues that were not anticipated by the voters. We have seen similar exceptions be abused in other jurisdictions, often with significant community backlash.

To keep marijuana licensing in-line with the expectation of Wellington voters and prevent possible abuses of the variance process, we suggest that the Board of Trustees clarify that variances are binding upon the Local Licensing Authority for purposes of the Land Use Code, but that the setback standards found in the marijuana code are separately addressed without regard for variances. This clarification would not require an amendment to the Town Code and would only require an understanding of Town staff related to the application of the separate zoning and setback standards.

Please let us know if you have any questions. You can reach me at: jeff@gardlawfirm.com or 303-499-3040. We look forward to hearing from you.

Sincerely,

/s/Jeffrey S. Gard
Jeffrey S. Gard

KBN Law
7830 W. Alameda Ave.
Suite 103-301
Lakewood, CO 80226
Phone: 720.773.1526
Email: Mario@kbnlaw.com

January 3, 2023

Town of Wellington
Attn : Board of Trustees

Re: *Clarification to Issues Brought up at the December 3, 2022 Town of Wellington Board of Trustees Meeting*

Board of Trustees:

I am writing on behalf of my client, Piper Ogden Company, LLC ("Piper Ogden"), to thank the Town of Wellington Board of Trustees ("Board of Trustees"), for allowing me to speak at the December 13, 2022 Board of Trustees Meeting ("December 13th Meeting") and engaging in thoughtful discussion regarding issues I raised during my public comment. We understand that it would have been against precedent for me to answer questions at that meeting, but both my client and I would be willing to engage the Board of Trustees, as you discussed, in the near future.

I would like to provide some additional information based on the discussion at that meeting. Specifically, because the Board of Trustees is considering changes to the ordinance governing marijuana sales in Wellington – and because it is now allowed to make those changes under the ballot measure passed by the people of Wellington – I believe this information would be useful.

If there are any additional questions, I can either reply by letter or help to facilitate a discussion at either the next Board of Trustees Regular Meeting or a Special Meeting.

Needs and Desires Requirement

First, I noted that alcohol sales do not have the same affirmative requirement that has been proposed in the new Sec. 2-14-40(b).[1] Specifically, the proposed change requires an applicant to "satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business" and that "the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the property line of the Premises identified in the application." After my comments, Mr. Sapienza appeared to state that liquor licensing does include this requirement. Because I could not clarify at the meeting, I thought it would be useful to do so in this letter.

Colorado Revised Statutes ("C.R.S.") § 44-3-301(2)(a) is the operative state statute governing interaction from the community. It states:

> "Before granting any license, all licensing authorities shall consider … the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidence by

[1] A copy of the proposed ordinance sent to me by Dan Sapienza has been attached to this letter for easy reference and to avoid any confusion.

petitions, remonstrances, or otherwise."[2]

Note that this statute does not place an affirmative requirement on the applicant, but on the licensing authority. The licensing authority is required to "consider" the information before it. This seems to be the better approach for any similar change in Wellington. By requiring the licensing authority to consider similar information, it provides an avenue for the public to be included in the licensing discussion. However, it should also be noted that the needs and desires of the community are not wholly conclusive for liquor and should not be for marijuana. Furthermore, the subjective nature of the information provided could be more concrete. For example, the Board of Trustees could specify that a petition signed by 25 inhabitants would provide the requisite proof. Similarly, the Board of Trustees could allow individuals working in the surrounding area, not just residents, to engage in comment as a part of the community.

Setbacks

During the December 13th Meeting, the Board of Trustees also discussed whether there is a "standard" for setbacks for marijuana dispensaries from preschools and daycares. Throughout the state, these setbacks are usually set at 1,000 feet or less (e.g. 100 feet or 500 feet). A setback of 2,000 feet – or even a quarter mile – represents the largest setback we are aware of in the state. For example, the following setbacks have been adopted in the region around Wellington and some large cities in Colorado:

City / Town	Setback from School/Child Care	Code Citation
Garden City	1,000 ft from a school	Garden City Municipal Code § 16-5-110(b)
Fort Lupton	1,000 ft from a school or child care center	Fort Lupton Municipal Code § 6-361(b)(3)
Log Lane Village	100 ft from a school or child care facility	Log Lane Village Municipal Code § 8-101(a)
Milliken	1,000 ft from a school or licensed daycare	Miliken Municipal Code § 6-7-120(d)
Fort Collins	1,000 ft from a preschool or school	Fort Collins Municipal Code § 15-615(a)(1)
Northglenn	500 ft from a license daycare facility 1,000 ft from a school	Northglenn Municipal Code § 18-16-13(a)
Boulder	1,000 ft from a school or day care center	Boulder Municipal Code § 6-16-7(e)
Denver	1,000 ft from a school or child care establishment	Denver Revised Municipal Code § 6-209(b)

It should also be noted that these measurements are all measured via a direct measurement from premises to premises. This is in contrast to liquor licensing restrictions which are only 500 feet (C.R.S. § 44-3-313(d)(I)) measured using a route of direct pedestrian access (C.R.S. § 44-3-313(d)(II)). Consequently, any marijuana dispensary protects public safety concerns by meeting a much higher setback standard, even at distances far below the 2,000 feet currently used by the Town of Wellington.

By adopting a change to 1,000 feet, or even to a quarter mile, the Town of Wellington would bring

[2] This is frequently referred to as a "needs and desires" requirement.

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ph. 720.773.1526 – email Mario@kbnlaw.com – Twitter @MarioNicolaiEsq

itself in line with its neighbors and cities across the state.

If you have any questions for would like to discuss this matter, you may reach me by email at Mario@kbnlaw.com or by telephone at (720) 773-1526.

Sincerely,

Mario D. Nicolais

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Cc:

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BOARD OF TRUSTEES
December 13, 2022
Immediately following the Regular Meeting

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Work Session Agenda

The Zoom information below is for online viewing and listening only.

Please click the link below to join the webinar:
https://us06web.zoom.us/j/89986580740?pwd=RGRTTE0waHdWMjJWc3E4a1haaDU2QT09
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Webinar ID: 899 8658 0740
International numbers available: https://us06web.zoom.us/u/klSUp8mym

A. ITEMS

1. Possible Considerations for Updates to Ordinance Regulating Marijuana

- Dan Sapienza, Town Attorney

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

TOWN OF WELLINGTON

Board of Trustees Meeting

Date: December 13, 2022

Subject: Possible Considerations for Updates to Ordinance Regulating Marijuana

- **Dan Sapienza, Town Attorney**

BACKGROUND / DISCUSSION

Attached is a proposal regarding marijuana that could address some issues that have been raised around marijuana licensing. In particular, this is intended to create a path for parties desiring a reduced setback limit to request a variance through the Board of Adjustment, as with any other variance request. It also fixes an issue with Residential Zoning that has been identified and includes a suggestion from our Licensing Authority regarding hearings.

1. Apply the 200-foot setback from residential properties to R-3 zoning as well. The referred ordinance only requires a 200 foot setback from R-1, R-2, and R-4 properties, but in the new (proposed) zoning map, there will be R-3 zoning. It seems that the intent of the referred ordinance was to have uniform setbacks from all residential properties, so the attached adds R-3 properties to the list. Without this change, if properties are zoned as R-3, there would be no required setback from those properties.

2. Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.

   The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.

   The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.

3. Add requirements for applicants to allow the LLA to look at neighborhood wishes and suitability of the applicant. As has been discussed previously, neighborhood wishes and suitability of an applicant are not issues on which the LLA may base decisions for issuance of a marijuana license. At present, neighbors wishing to fight a marijuana application in their area would not be allowed to present evidence at a public hearing for a marijuana license, as their views may not be considered in the LLA's decision-

making. This change would make a public hearing regarding a marijuana application more similar to a liquor license application hearing and would allow for more public input into the LLA's decision-making.

STAFF RECOMMENDATION

ATTACHMENTS

1. Ordinance Proposal - Marijuana Variance Amendment - CLEAN
2. Ordinance Proposal - Marijuana Variance Amendment - REDLINE
3. Ordinance Adopted by Voters - Retail and Medical Marijuana
4. Variance Provision - Excerpt from 2022 Land Use Code

Sec. 2-14-40. Applications—Licenses.

(a) An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

(b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

Sec. 2-14-70. Restrictions for applications for marijuana store licenses.

(a) The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

(1) Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.

(2) Until it is verified by the Planning Director or their delegee that the Premises complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:

a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and

b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and

c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential Rural Density District), R-2 (Residential Low Density District), R-3 (Residential Medium Density District)and/or R-4 (Downtown Neighborhood District).

(b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.

(c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

(Ord. of 12-3-21 , § 2)

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- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

(b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

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(b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.

(c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

(Ord. of 12-3-21 , § 2)

Full Text of Measure:

Passage of the Ordinance to be referred to the voters of the Town of Wellington:

TOWN OF WELLINGTON

ORDINANCE NO XX-2021

Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

WHEREAS Article XVIII, Sections 14 and 16 of the Colorado Constitution. allow the personal and medical use of marijuana in Colorado subject to local; and

WHEREAS, Article XVIII, Sections 14 and 16of the Colorado Constitution and applicable laws allowed the Town of Wellington, Colorado (the "Town") to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or Retail Marijuana Stores and the Town enacted an ordinance prohibiting such operations.

WHEREAS, a citizen initiative was submitted to the Wellington Town Clerk to allow the sale of retail and medical marijuana and the petition was found by a C.R.S. §31-11-110 hearing officer to not be sufficient and the petition therefore was not submitted to the voters of the Town..

WHEREAS, it is unclear to the Wellington Town Board of Trustees (the "Town Board") whether the voters wish to see the sale of medical and retail marijuana allowed in the Town and the Town Board feels that the question of whether retail or medical marijuana sales should be allowed in the Town should be decided by the Town's voters.

WHEREAS, members of the Town Board have voiced a willingness, if flaws in the previously submitted initiated ordinance can be addressed that the Town Board might be willing to refer the question of whether retail and medical marijuana should be allowed in the Town to the Town's voters and there has been a further willingness to refer an initial regulatory scheme to the Town's voters so long as the Town Board would have full authority to modify the regulatory scheme after following January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON COLORADO UPON APPROVAL BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON. COLORADO, THAT:

Section 1. Articles 13.5 of Chapter 16 and Article 13.6 of Chapter 2 of the Wellington Municipal Code are hereby repealed in their entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 - RETAIL AND MEDICAL MARIJUANA STORES

Sec. 2-14-10 Purpose.

A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.

B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell retail marijuana or medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Sections 14 and 16 of Article XVIII of the State Constitution and Article 10 of Title 44, C.R.S. and 1 CCR 212-3 (the "Colorado Marijuana Code").

Sec. 2-14-20 Powers and Duties of the Local Licensing Authority.

A. The Local Licensing Authority shall grant or deny local Licenses for the distribution and sale of retail marijuana or medical marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.

B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana to be consistent with state law for the enforcement of this Article.

C. This Article 14 incorporates the requirements and procedures set forth in the Colorado Marijuana Code. The Local Licensing Authority adopts the provisions and restrictions set forth in Colorado Marijuana Code and regulations for all Licensees not explicitly addressed within this Article. In the event of conflict between the provisions of this Article and the Colorado Marijuana Code, the more restrictive provision shall control.

D. On and after February 1, 2022, the Local Licensing Authority shall begin processing applications under this Chapter and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Article so long as the conditions set forth in this Article are met and the applicant has paid the operating fee and any other fees required by this Article. Local Licensing Authority fees (exclusive of State fees) for applications shall not exceed $5,000.00.

Sec. 2-14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in Article XVIII, Sections 14 or 16 of the Colorado Constitution and the Colorado Marijuana Code. C.R.S. §44-10-101, *et seq.* and C.R.S. §25-1.5-101, *et seq.* unless varied hereunder:

Colorado Marijuana Code: Article 10 of Title 44 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to sell retail and/or medical marijuana in accordance with the provisions of the Colorado Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington shall serve as the Local Licensing Authority unless the Town Board creates a separate Local Licensing Authority empowered to act in such capacity.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Medical marijuana store A "Medical marijuana business" as defined by the Colorado Marijuana Code but only including a medical marijuana store, and not including a medical marijuana cultivation facility, a medical marijuana products manufacturer, a medical marijuana testing facility, a marijuana research and development licensee, a medical marijuana business operator, or a medical marijuana transporter.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Protected Use: Those uses defined in Sec. 2-14-70 including Schools, parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana Store License or parcels zoned R-l (Residential District), R-2 (Residential District) and/or R-4 (Residential District).

Retail Marijuana Store: A "Retail Marijuana Business" as defined by the Colorado Marijuana Code but only including a retail marijuana store and not including a retail marijuana cultivation facility, a retail marijuana products manufacturer, a marijuana hospitality business, a retail marijuana hospitality and sales business, a retail marijuana testing facility, a retail marijuana business operator, or a retail marijuana transporter.

School: A public or private preschool, including a licensed daycare or a public or private elementary, middle, junior high, or high school, college, or principal campus of a college (and including the new Middle / High School at Wellington, not open as of the date of adoption of this ordinance).

State Licensing Authority: The Colorado Department of Revenue, Marijuana

Enforcement Division, created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of retail and medical marijuana in this State, pursuant to Articles 10 of Title 44 C.R.S. and Colorado Marijuana Rules 1 CCR 212-3, and other Colorado applicable statutes as applicable and incorporated in the Colorado Marijuana Code.

Sec. 2-14-40 Applications-Licenses.

An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed retail and/or medical marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

Sec. 2-14-50 Denial of Application.

A. The Local Licensing Authority shall deny a Local License application as provided for by the Colorado Marijuana Code and regulations promulgated thereunder, and if the application contains any false, misleading information. If an application is determined incomplete by the Local Licensing Official, the applicant will be notified and be given seven (7) days to remedy and supplement the application to conform to this Article or the application may be denied.

B. The Local Licensing Official shall consider and act upon all applications in accordance with the standards of this Article and in compliance with the Colorado Marijuana Code and regulations. The Local Licensing Authority shall deny any application that is not in full compliance with this Article.

C. The Local Licensing Authority shall formulate a list of all additional requirements if needed in addition to the forms provided by the State Licensing Authority.

D. If the Local Licensing Authority denies a License, the applicant shall be entitled to a hearing.

E. If an application is denied, the Local Licensing Authority shall set forth in writing the grounds for denial.

Sec. 2-14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Marijuana Code and applicable state regulations.

Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses.

A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

1. Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.

2. The approval of the application for Licensure for a Retail or Medical Marijuana Store License complies with all zoning ordinances and said zoning ordinances shall be amended as follows:

   Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:

   a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and

   b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and

   c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-l (Residential District), R-2 (Residential District) and/or R-4 (Residential District).

B. In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section.

C. The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Sec. 2-14-80 Transfer of Ownership.

A. A Local License granted under the provisions of this Article shall not be transferable except as provided in this Section, but this Section shall not prevent a change of location as provided in the Colorado Marijuana Code.

B. For a transfer of ownership, a Licensee shall apply to the State Licensing Authority and Local Licensing Authority on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority may charge a fee not to exceed $1,000.00 to process such transfer and shall permit a transfer of ownership pursuant to this Article in conjunction with the Colorado Marijuana Code.

Sec. 2-14-90 Licensing Renewal.

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration with a Local Licensing Authority renewal application fee of $1,500.00. The Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold hearings on Licensing renewal applications including for good cause. Good Cause for purposes of this Section shall mean:

1. The Licensee renewal applicant has violated or has failed to comply with any terms, conditions, or provisions of this Article or the Colorado Marijuana Code or any supplemental law; ordinance; or regulation; or

2. The Licensee has been operated in a manner that adversely affects the public health or welfare of the immediate neighborhood in which the establishment is located.

B. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License has been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee paid to the Local Licensing Authority of $500.00 in addition to the License renewal fee paid to the Local Licensing Authority and any fees due to the State Licensing Authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until final action to approve or deny the Licensee's renewal application.

C. Notwithstanding the amount specified for the Late Application Fee, the Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, may reduce the amount of the renewal application and/or the late application fee.

Sec. 2-14-100 Fees.

Every Retail and Medical Marijuana Store Licensee shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Local Licensing Authority and set by resolution, but in no event shall either fee payable to the Local Licensing Authority exceed five thousand dollars ($5,000.00).

Sec. 2-14-110 Hours of Operation.

A Retail or Medical Marijuana Store Licensee may engage in the sale of marijuana and marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Local Licensing Authority may at its discretion extend, but not further limit, such hours of operation.

Sec. 2-14-120 Disciplinary Actions: Suspension-Revocation-Fines.

A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.

B. The Local Licensing Authority may take disciplinary action for violations by Licensee or any agent, manager, or employee of Licensee of the Colorado Marijuana Code or this Article.

C. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of all or any portion of a suspension and may hold all or part of any suspension in abeyance on conditions set by the Local Licensing Authority. When determining whether to impose a fine in lieu of a suspension the Local Licensing Authority may make findings that:

1. The public safety, health and welfare would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes:

2. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and

3. The Licensee has not had its License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision in relation to a penalty for violations pertaining to the Licensee.

D. The fine accepted shall be: (a) not less than five-hundred dollars ($500.00) nor more than two thousand five-hundred dollars ($2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of Premises, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars ($1,000.00) nor more than ten-thousand dollars ($10,000.00) for violations that have an immediate impact on the public health, safety, or welfare.

E. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.

F. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension, if the fine is paid to a Local Licensing Authority.

G. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority and Licensee shall be, upon request, afforded a hearing within thirty (30) days.

Sec. 2-14-130 Inspection of Books and Records-Inspection Procedures.

A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.

B. The Licensed Premises, including any places of storage where retail or medical marijuana is stored, sold, or dispensed shall be subject to inspection by the Local Licensing Authority and its investigators, during all business hours for the purpose of inspection or investigation and for examination of any inventory or books and records required to be kept by the Licensee. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay. and, upon request by authorized representatives of the Local Licensing Authority, the Licensee shall open the area for inspection.

C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 2-14-140 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only Retail Marijuana Store and Medical Marijuana Store Licenses upon payment of a fee and in compliance with all Local Licensing requirements to be determined by the Local Licensing Authority.

Sec. 2-14-150. Other Marijuana Licenses Prohibited.

A. Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail and/or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

B. The Local Licensing Authority declares that, should any provision, section, paragraph, sentence, or word of this Article be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Article as hereby adopted shall remain in full force and effect.

Section 3. Subject to the following, prior to January 1, 2023 modification of the provisions of this ordinance shall require approval of the voters of the Town of Wellington, Colorado. Following January 1, 2023, the Town Board may modify, or repeal this ordinance by ordinance of the Town Board, prior to January 1, 2023, the Town Board may modify this ordinance by ordinance of the Town Board to comply with the Colorado Marijuana Code or other state statute or state regulation.

Section 4. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 6. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

Variance Provisions of the

2022 Land Use Code

Available at: https://www.wellingtoncolorado.gov/DocumentCenter/View/3859/Land-Use-Code---ADOPTED

2.22 Variance

2.22.1 Purpose. A variance provides relief from the strict application of a standard to a specific site that would create an unnecessary hardship or practical difficulties on all reasonable use of the property.

2.22.2 Applicability. Variances may be sought for relief from dimensional and numerical standards of this Land Use Code. Variances may not be sought to vary the allowed use on a property.

2.22.3 Procedure. All applications for Variances shall comply with the following specific procedures in addition to the general procedures set forth in Section 2.04.

A. *Pre-application Conference*. A pre-application conference is required for a variance application to discuss specific application procedures, criteria, and requirements for a formal application.

B. *Application Submittal*. The variance application shall include:

1. A site plan detailing property boundaries, footprints of all existing and proposed buildings, parking configuration, location of all utilities and easements, and any other details required to demonstrate conformance with all regulations and development standards applicable to the proposed zoning district;
2. A written narrative justifying why the proposed variance fits in with the surrounding neighborhood;
3. Conceptual building plans, including elevations, exterior materials, doors, decks, etc., if applicable;
4. Any other information identified in the pre-application meeting.

C. *Review and approval*.

1. Board of Adjustments Review.
    a. The Board of Adjustments shall hold a public hearing and review the application at a regular meeting. Public notice shall be given pursuant to Section 2.02. The applicant or their representative may be present at the meeting to present the proposal. Staff shall present their staff report and

recommendation.

b. The Board of Adjustments shall either approve, approve with conditions, or deny the application, or continue the hearing pursuant to Section 2.02.4, with the requirement that the applicant submit changes or additional information which they find necessary to determine whether the application complies with the Town's regulations, goals, and policies.

c. Any information, exhibits, plans or elevations, whether conceptual or detailed, that are part of the application approved by the Board of Adjustments shall be considered a part of, and inseparable from, the approval. All development shall conform to the approved plans, unless otherwise provided for within this Land Use Code.

2.22.4 Findings for Approval.

A. The relief requested is consistent with the Comprehensive Plan and the intent stated in this Land Use Code;

B. Strict application of the regulation will result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing zoning, as opposed to convenience or benefit of the applicant or a specific application;

C. The need for the variance is due to specific and unique physical conditions on the site that do not exist on similarly situated land in the area;

D. The manner in which strict application of the regulation deprives the applicant of reasonable use of the land compared to other similarly situated land in the area;

E. The circumstances warranting the variance are not the result of actions by the applicant, or could not be reasonably avoided by actions of the applicant;

F. Granting the variance will not harm the public health, safety and welfare or the purposes and intent of these regulations;

G. The relief requested is the minimum necessary to alleviate the hardship and practical difficulties; and

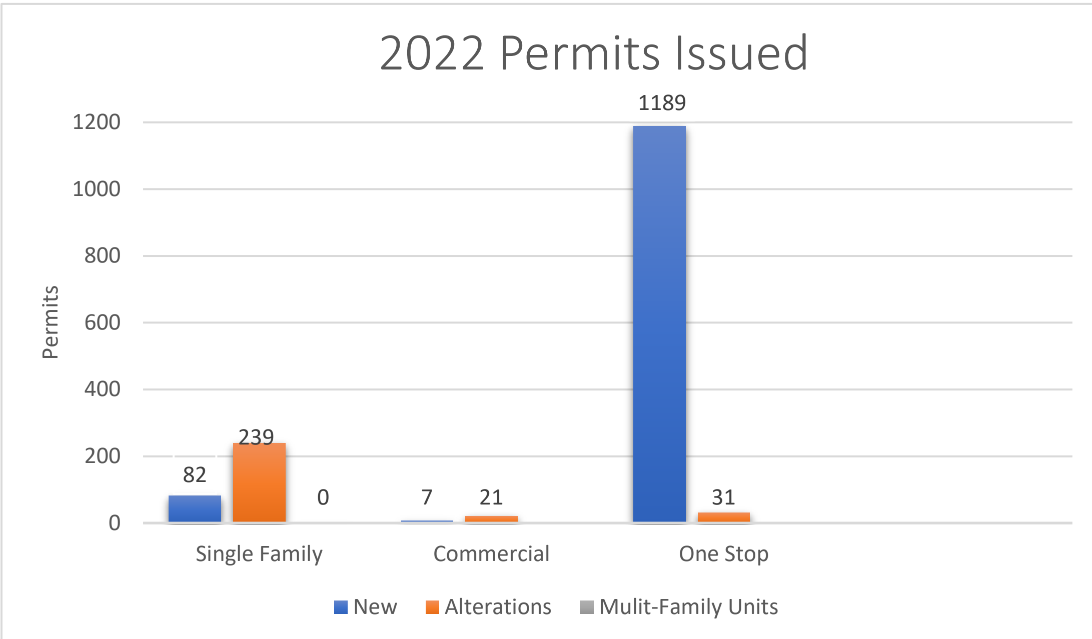
H. The relief requested is consistent with any other prior approvals and official plans and policies created under the guidance of that plan for these areas (e.g., The Comprehensive Plan, specific area plans like a Downtown Corridor Study, etc.).

Building Department Activity

2022 Year End Report

2022 Total Building Permit Activity

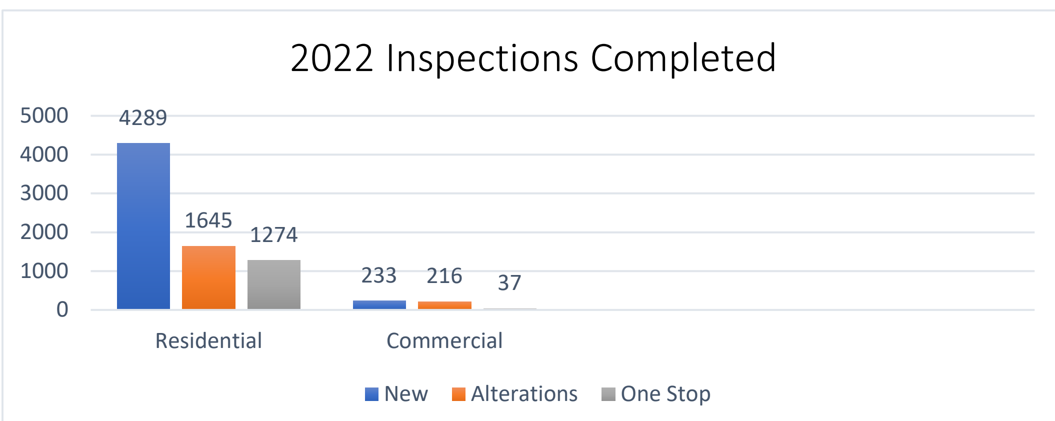
- Total Permits Issued – 1,906



Alterations Example: Basement Finish, Expansions, Remodels & PV Systems
One Stop Example: Re-Roof, Water Heater, Furnace, Windows & Siding

2022 Building Inspections Activity

- Total Inspection Performed - 7,916



2022 Permit Valuations

- Total Valuation of all Permits - $57,601,589
- Residential Valuation - $46,304,985
- Commercial Valuation - $11,296,921
    - $11,246,921 of commercial valuation is Town Water Treatment Plant and Wastewater Reclamation Facility buildings (7 buildings, no equipment included)

2022 Building Highlights

Re-roofs, following July hail storm

- (25) Commercial and (1119) Residential Permits (1144 total) issued from July 26th - December 31st 2022.
- Average Valuation - $22,945
- Total Valuation - $25,675,588

WTP & WRF

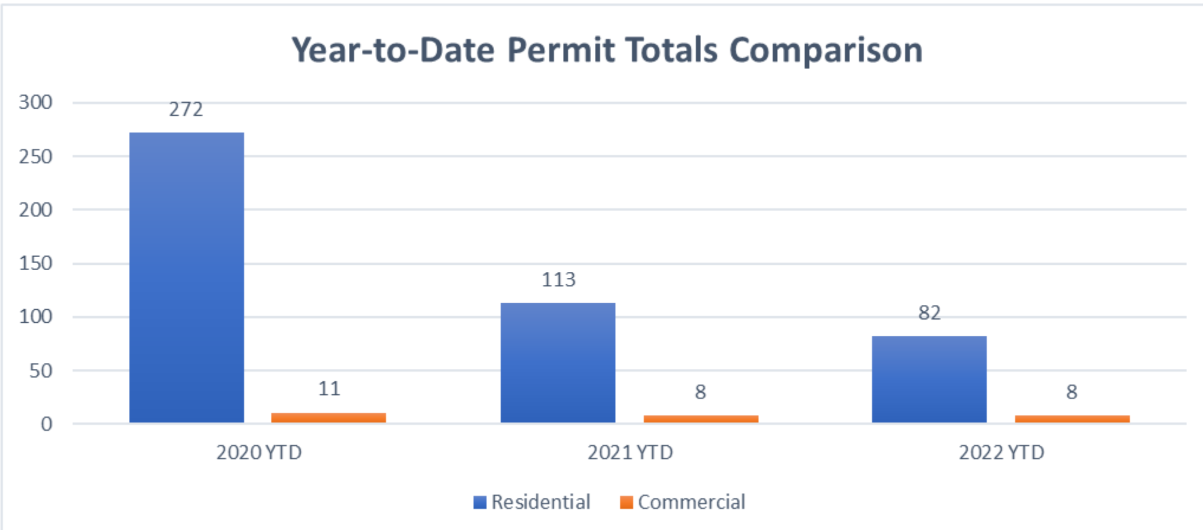
- 7 buildings
- Valuation $11,246,921.00 (Building Only)

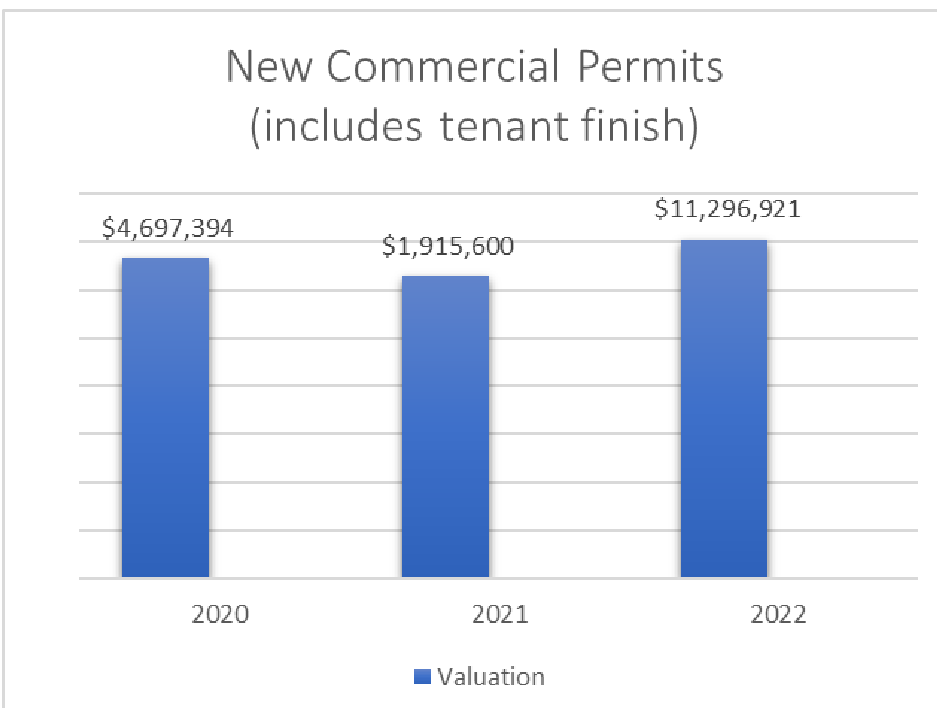
Open for Business Mainstreet Facade

- 10 Participating Businesses
- Total Valuation $651,117.00

Annual Comparisons

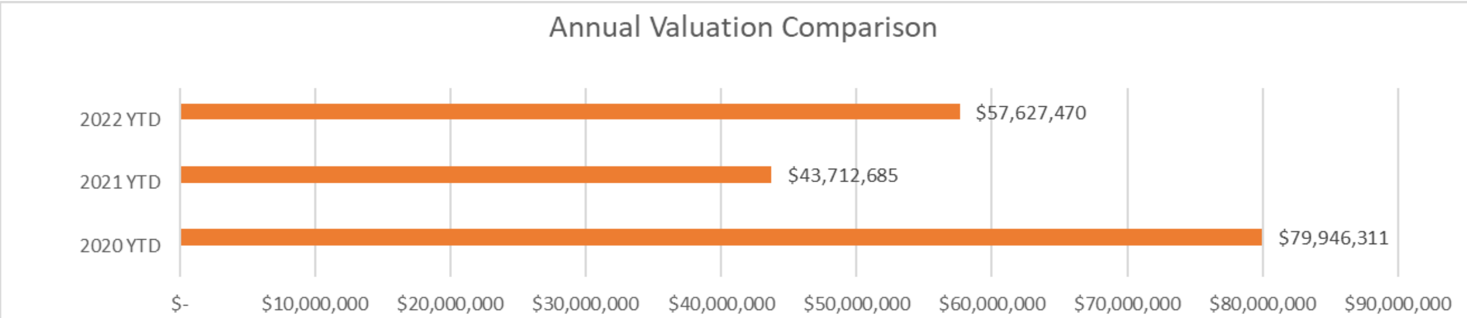
- New Commercial includes new construction and tenant finishes, but does not include alterations or remodels.





- 2022 new commercial valuations includes $11,246,921 for Town permits for Water Treatment Plant and Wastewater Reclamation Facility buildings.

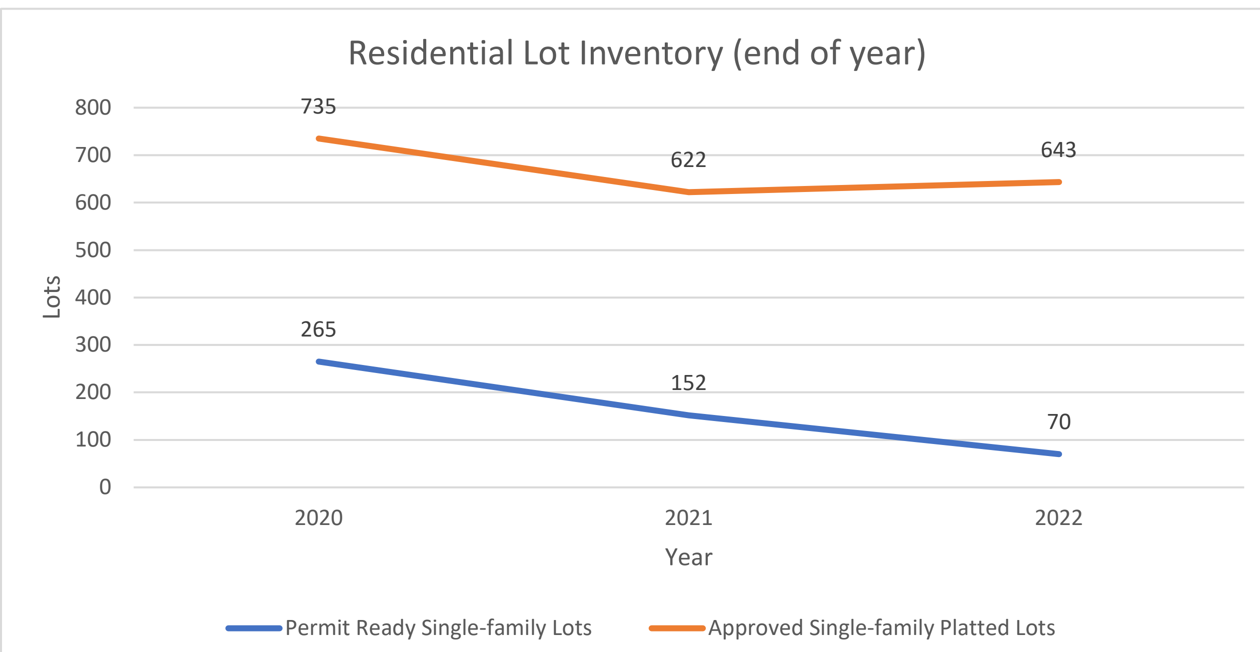
Annual Total Valuation Comparison



	2020 YTD	2021 YTD	2022 YTD
Valuation	$79,946,311.00	$43,712,685.00	$57,627,470.00
Permits Issued	898.00	999.00	1906.00

Valuation Permits Issued

- Number of permits and total valuation is impacted by a 2022 summer hailstorm.



- Approved Single-family Platted Lots are lots may not have street, water, sewer or other infrastructure installed.
- Permit Ready Single-family Lots have infrastructure installed and ready to issue a building permit.

January 24, 2023

Town of Wellington Board of Trustees:

An effective system of internal financial controls is necessary for the proper management of taxpayer funds as well as ensuring that financial reports are complete and accurate. In alignment with the Board of Trustees' goal to maximize financial transparency to the citizens of Wellington, the Finance Committee supports ongoing efforts to devise an internal controls framework to ensure proper management and accounting of financial resources.

Given our Town's current constraints on personnel and resources, not every conceivable internal control can be implemented. The purpose of this framework is not to mandate all feasible internal controls but to develop a cost-efficient structure that alleviates the most significant financial risks to the Town. The Finance Committee encourages efforts made by Town Staff to demonstrate a commitment to integrity and ethical values that not only align with our Board of Trustee's Strategic Plan but also the ethos of great character woven into the fabric of our community.

We support the implementation of effective and cost-conscious controls and oversight functions to our processes surrounding cash collection, billing & receivables, vendor management, and other areas that impact the Town's financial position. This Committee supports our Finance Director's effort to establish structure, authority, and responsibility delegated amongst the various Town Staff that impact financial controls and risk management. We believe in the competence and character of our Staff and will support their initiatives surrounding risk management to the best of our abilities.

The Town of Wellington is responsible and accountable to its taxpayers to establish an environment where citizens can be confident that funds are being managed properly. We support the Staff's efforts to assess all Town Operations to identify risks and create controls and oversight to mitigate those risks. Our goal is to develop awareness and expertise around the necessity for such controls, understand where targeted efforts can have the greatest mitigating impact, train staff on new procedures, and to monitor and oversee the results of said controls to ensure that our framework continues to iterate and improve.

Town of Wellington Finance Committee
January 9, 2023

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